

21 JANUARY 1948

I N D E X
Of
EXHIBITS

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
3150-332B		3804-B	Excerpt from the SAIONJI-HARADA Memoirs - Chapter 332 (11 July 1939)		37836
3150-334		3805	The SAIONJI-HARADA Memoirs	37839	
3150-334B		3805-A	Excerpt therefrom - Chapter 334 (25 July 1939)		37839
3150-335		3806	The SAIONJI-HARADA Memoirs	37841	
3150-335A		3806-A	Excerpt therefrom - Chapter 335 (p. 2597)		37841
3150-336		3807	The SAIONJI-HARADA Memoirs	37846	
3150-336B		3807-A	Excerpt therefrom - Chapter 336 (14 August 1939)		37846
3150-368(B)		3808	The SAIONJI-HARADA Memoirs	37853	
3150-368(B)-A		3808-A	Excerpt therefrom - Chapter 368(B) (pp.2866-7)		37853
			Rejected		37855
3150-370		3808	The SAIONJI-HARADA Memoirs	37861	

21 JANUARY 1948

I N D E X
of
EXHIBITS
(cont'd)

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
3150-370B		3808-A	Excerpt therefrom - Chapter 370 (pp. 2874-5)		37861
					37861
			<u>MORNING RECESS</u>		
3150-373A		3687	Excerpt from the SAIONJI- HARADA Memoirs - Chapter 373 (pp.2892-96)		37864
3150-374		3809	The SAIONJI-HARADA Memoirs	37874	
3150-374B		3809-A	Excerpt therefrom - Covering the 1 September 1940 Entry (pp.2921-23)		37874
3150-378A		3810	Excerpt from the SAIONJI- HARADA Memoirs - Chapter 378 (pp.2977-80)		37880
					37885
			<u>NOON RECESS</u>		
4041 (Item 15)		3811	Captured German docu- ment - Memorandum signed by Wiehl, dated 21 December 1938		37899
4075 (Item 9)		3812	Telegram sent to Tokyo and signed by Wiehl, dated 15 January 1942		37902

21 JANUARY 1948

INDEX

of

EXHIBITS

(cont'd)

<u>Doc.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Proc.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
4075A (Item 9)		3812-A	Excerpt therefrom		37905
4096		3813	Secret Reich Matter, dated February 1942		37910
4096-A		3813-A	Excerpt therefrom - Concerning the Fuehrer's Conversation with Ambassador OSHIMA on 3 January 1942 in the presence of the Reich Foreign Minister in the Wolfsschanze from 1615 to 1800 hours		37910
1383B(9)		3814	Telegram to the Vice- Chief from the Military Attache to the German Embassy		37915

AFTERNOON RECESS

4025 (Item 11)		3815	Captured German docu- ment - Memorandum by Secretary of State Weizsacker, dated 12 July 1941 re a Con- ference held on that date with Ambassador OSHIMA		37919
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(cont'd)

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
525		3816	Reich Secret, dated 25 July 1942	37923	
525-A		3816-A	Excerpt therefrom - Notes Concerning the Conversation between the Reich Foreign Minister and Ambassador OSHIMA at Steinort on 9 July 1942		37923
2312B		3817	Minutes on the Discussion of the Reich Minister for Foreign Affairs with Ambassador OSHIMA on 6 March 1943		37931
4054 (Item 2)		3818	Captured German docu- ment - Telegram from the German Ambassador and Wohltat in Tokyo, dated 23 January 1942	37936	
4054A (Item 2)		3818-A	Excerpt therefrom		37936
4054B		3818-B	Captured German docu- ment - Memorandum signed by Wiehl, dated 23 January 1942		37938
4092		3819	Telegram from Ribbentrop to the German Ambassador in Japan, dated 26 March 1942		37941

Wednesday, 21 January 1948

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE JU-AO MEI, Member
from the Republic of China, not sitting from 0930 to
1600; HONORABLE JUSTICE E. STUART McDOUGAL, Member from
the Dominion of Canada, not sitting from 1100 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

1 military alliance and that the Emperor rebuked him
2 for that false statement. And, secondly, that ITAGAKI
3 was planning to send General TERAUCHI to the Nazi con-
4 ference for the purpose of strengthening the Army view
5 as to what form the alliance should take.

6 THE PRESIDENT: By a majority the objection is
7 overruled and the document admitted on the usual terms.

8 CLERK OF THE COURT: Prosecution document
9 3150-332B will receive exhibit No. 3804-B.

10 (Whereupon, the document above
11 referred to was marked prosecution exhibit
12 No. 3804-B and received in evidence.)

13 MR. COMYNS CARR: This is early July 1939.

14 "When I /T.N. HARADA/ met the Lord Keeper
15 of the Privy Seal on the 7th, he was talking about the
16 Emperor and the War Minister. He said: "The War Min-
17 ister suddenly went to the Imperial Palace and spoke
18 about General TERAUCHI being sent to the Nazi Party
19 Conference. Although the Navy was planning to send
20 Admiral OSUMI at that time, there was no actual formal
21 notice yet from the other /T.N. German/ government, and
22 since this is still confidential, it hasn't been re-
23 ported to the Emperor, nor has the Navy reported any-
24 thing concerning this matter. The Emperor already
25 knew that at the conference of the Supreme War

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1 MARSHAL OF THE COURT: The International Mili-
2 tary Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except SHIRATORI, who is represented by counsel. The
5 surgeon of Sugamo Prison certifies that he is ill and
6 unable to attend the trial today. The certificate will
7 be recorded and filed.

8 With the Tribunal's permission the accused
9 HOSHINO will be absent from the courtroom during the
10 entire morning session conferring with his counsel.

11 MR. YAMADA: I am YAMADA, counsel for the
12 accused ITAGAKI. I object to the tender of IPS docu-
13 ment No. 3150-332B which was tendered in evidence by
14 Mr. Comyns Carr yesterday. My grounds for objection
15 are that the dispatch of General TERAUCHI to Germany
16 and the opinion entertained by Foreign Minister ARITA
17 with regard to a military alliance are irrelevant in
18 so far as this issue is concerned. It is my submission
19 that in view of these grounds this document has no
20 importance and, therefore, should be rejected.

22 THE PRESIDENT: Mr. Comyns Carr.

23 MR. COMYNS CARR: May it please the Tribunal,
24 the importance of this document is that the accused
25 ITAGAKI is alleged to have reported to the Emperor
falsely that the Foreign Minister AKITA favored the

1 military alliance and that the Emperor rebuked him
2 for that false statement. And, secondly, that ITAGAKI
3 was planning to send General TERAUCHI to the Nazi con-
4 ference for the purpose of strengthening the Army view
5 as to what form the alliance should take.

6 THE PRESIDENT: By a majority the objection is
7 overruled and the document admitted on the usual terms.

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15 of the Privy Seal on the 7th, he was talking about the
16 Emperor and the War Minister. He said: "The War Min-
17 ister suddenly went to the Imperial Palace and spoke
18 about General TERAUCHI being sent to the Nazi Party
19 Conference. Although the Navy was planning to send
20 Admiral OSUMI at that time, there was no actual formal
21 notice yet from the other /T.N. German/ government, and
22 since this is still confidential, it hasn't been re-
23 ported to the Emperor, nor has the Navy reported any-
24 thing concerning this matter. The Emperor already
25 knew that at the conference of the Supreme War

1 Councillors, the War Minister reported that Foreign
2 Minister AhITA favored the Military Alliance and he
3 /T.N. Emperor/ thought it very distressing.

4 "Furthermore, in regard to the sending of
5 General TERAUCHI, the War Minister stated to the Em-
6 peror that it is necessary to send General TERAUCHI
7 even for the reason of strongly binding the Anti-
8 Comintern Pact spiritually. The Emperor did not think
9 it very good and said: 'You /T.N. War Minister/ know
10 my opinions well. Even before, at the conference of
11 the Supreme War Councillors, you reported an actual
12 falsity that the Foreign Minister was in favor of the
13 Military Alliance. That is very insolent.'"

14 Next I offer in evidence IPS document No.
15 3150-333A of the 11th July 1939 when KIDO was Home
16 Minister, with regard to the encouragement of anti-
17 British demonstrations in Japan during the Anglo-
18 Japanese Tokyo Conference. This rebuts the statements
19 in his affidavit, paragraph 121, page 93, record page
20 30,877 to 8.

21 THE PRESIDENT: Mr. Logan.

22 MR. LOGAN: If the Tribunal please, we object
23 to this document on the ground that it has absolutely
24 no importance and has no probative value. If it has
25 any value at all, and this diary has any value, I

1 suggest that my friend read the short sentence on page
2 2581 of the document from which it is taken which en-
3 tirely rebuts what he is trying to prove in IPS document
4 3150-333A.

5 THE PRESIDENT: Mr. Carr, do you wish to say
6 anything?

7 MR. COMYNS CARR: I have nothing to add, your
8 Honor. I am willing to read the sentence my friend
9 wants if the document is admitted.

10 THE PRESIDENT: By a majority the objection is
11 sustained and the document rejected.

12 MR. COMYNS CARR: I offer in evidence IPS
13 document 3150-334B to contradict ITAGAKI's testimony
14 at page 30,510, line 4, where he denied that he had a
15 conversation with Prince KONOYE a few days prior to the
16 23d day of July 1939 with respect to the possibility of
17 changing the Emperor's mind regarding the military agree-
18 ment.

19 THE PRESIDENT: Mr. YAMADA.

20 MR. YAMADA: I object to the introduction of
21 this document. In my submission this document has no
22 importance and no probative value. For these reasons
23 I object to the introduction of this document.

24 THE PRESIDENT: By a majority the objection is
25 overruled and the document admitted on the usual terms.

1 CLERK OF THE COURT: Prosecution document
2 3150-334 will receive exhibit No. 3805 for identifica-
3 tion only; the excerpt therefrom, being prosecution
4 document 3150-334B will receive exhibit No. 3805-A

5 (Whereupon, the document above re-
6 ferred to was marked prosecution exhibit No.
7 3805 for identification, the excerpt therefrom
8 being marked prosecution exhibit No. 3805-A and
9 received in evidence.)
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1 MR. COMYNS CARR: (Reading) "On the 23rd,
2 MATSUDAIRA, the Chief Secretary to the Lord Keeper of
3 the Privy Seal, and I /HARADA/ went to the home of
4 Foreign Minister ARITA and we conversed on various
5 matters for three or four hours as we lunched. ARITA
6 said: 'When KONOYE met the War Minister the other day,
7 the War Minister asked KONOYE if it wasn't possible
8 to change the Emperor's mind in regard to this military
9 agreement, and KONOYE replied that it was very difficult.'

10 I now offer in evidence IPS document No.
11 3150-335A in rebuttal of ARAKI's refusal to confirm
12 having told HARADA (page 28,399, first question and
13 answer thereto) that KOISO had sent Kempai-tai men to
14 China and Manchuria disguised as laborers (page 28,398
15 last question and answer at top of page 28,399) and
16 that he, ARAKI, said a number of things to HARADA against
17 KOISO, (page 28399 last question but one and answer
18 thereto).

19 THE PRESIDENT: Mr. McManus.

20 MR. McMANUS: If your Honor please, I object
21 to this document on the general grounds heretofore
22 stated concerning the entire diary, concerning the
23 admission of any excerpts from the diary itself.

24 MR. BROOKS: On behalf of the accused KOISO
25 I object to this as being a document that discusses

1 a matter that in the light of the date has no relevance
2 or importance in relation to the matters before the
3 Tribunal. I do not believe that KOISO was examined
4 as to the Kempei being sent in work clothes to
5 Manchuria or China. I may be wrong on that. In fact,
6 I don't see what connection he had at this time with
7 them.

8 But regardless of that, as to the materiality
9 of that I think that it isn't any matter of impeachment
10 and if there is anything in this document of probative
11 value it would be to meet the prosecution's charge of
12 conspiracy between ARAKI and KOISO because this shows
13 definitely that there could not tend to be a conspiracy
14 between the two.

15 THE PRESIDENT: By a majority the objections
16 are overruled and the document admitted on the usual
17 terms.

18 CLERK OF THE COURT: Prosecution document
19 3150-335 will receive exhibit No. 3806 for identification
20 only; the excerpt therefrom, being prosecution document
21 3150-335A will receive exhibit No. 3806-A.

22 (Whereupon, the document above re-
23 ferred to was marked prosecution exhibit No.
24 3806 for identification, the excerpt there-
25 from being marked prosecution exhibit No.

3806-A and received in evidence.)

MR. COMYNS CARR: (Reading) "3 August 1939

" Education Minister ARAKI said, 'I am not too worried about the Rightists. If we act resolutely, they can be swayed. But the important question is, how the situation within the Army will develop and how to gradually take control of this.' Next, he said, 'I know quite a bit about KOISO, the Minister of Overseas Affairs. His shortcoming is that he is a man of intrigue and trickery. For instance, when the problem of legal tender arose at the recent Cabinet meeting, he boldly suggested that counterfeit currency be used. This is very distressing. There are instances when he sent the Kempeitai to China and Manchuria dressed in work clothes. However, at a time when Japan is trying to strive for the new order based on virtue, these acts are contradictory and I think it is extremely harmful. KOISO is a person who has power and enthusiasm, but he has not set opinions and deals only in intrigues and trickery. He is a man who can easily be swayed.' It is a matter of course that he did not speak favorably about KOISO, but on the contrary, he spoke very ill of him. Therefore, although KONOYE often proposed to unite ARAKI and KOISO, I felt it utterly futile."

1 I tender in evidence IPS document 3150-336A
2 to contradict the testimony of OSHIMA, page 34,146,
3 line 3 to 13, in which he denied that he became very
4 angry upon learning that Captain ENDO had made an
5 explanation of the position of the Japanese Navy to
6 the Chief Secretary of the German Navy Ministry in
7 regard to the strengthening of the Anti-Comintern Pact.

8 THE PRESIDENT: Mr. Cunningham.

9 MR. CUNNINGHAM: If the Tribunal please, I
10 would like to object to the introduction of this docu-
11 ment for the reason that it is certainly not authentic.
12 It doesn't contain anything new, but how HARADA could
13 record on the 14th of August about a conversation which
14 took place on the 3d of August between him and Captain
15 TAGAKI about a conversation which took place at sometime
16 far in the past in Germany with any degree of clarity
17 or authenticity is something beyond my imagination.

18 He says in here, "So goes the story." Well, I suppose
19 that story had taken on momentum from the time it
20 began until it took on great proportions.

21 I want to suggest that Stahmer was here; he
22 could have been questioned about this.

23 THE PRESIDENT: Mr. Carr, have you anything to
24 add?
25

MR. COMYNS CARR: No, your Honor.

1 THE PRESIDENT: By a majority the objection
2 is sustained and the document rejected.

3 MR. COMYNS CARR: I offer in evidence IPS
4 document 3150-336B to contradict the testimony of
5 ITAGAKI, page 30,513, line 1 to page 30,514, line 12,
6 in which he denied that it was the contention of the
7 Army that a change of the situation necessitated a
8 military alliance, and in which he also denied that
9 as a representative of the general opinion of the Army
10 he favored the military alliance.

11 THE PRESIDENT: Mr. YAMADA.

12 MR. YAMADA: On behalf of ITAGAKI I object to
13 the tender of this document. With regard to his attitude
14 toward the alliance pact ITAGAKI so far has never
15 denied nor ever said that he did not recall. There is
16 absolutely no new matter contained in this document
17 in respect to the charges against him and, therefore,
18 I submit that there is no importance in this document.

19 ARITA's observations with respect to ousting
20 ITAGAKI are mere speculation and, therefore, has no
21 relevancy. ITAGAKI's attitude was a moderate one and
22 ARITA recognized that; even ARITA recognized it. More-
23 over, ARITA, appeared in this Tribunal as a witness and
24 I feel it regrettable that the prosecution did not see
25 fit to cross-examine him on this question. On these

grounds I submit that this document should be rejected.

1 THE PRESIDENT: Mr. Carr.

2 MR. COMYNS CARR: With regard to the last
3 observation, your Honor, the Tribunal will, of course,
4 remember that cross-examination of persons other than
5 accused is limited to their affidavits, but I rather
6 think my friend is mistaken. I think he was cross-
7 examined on this at page 30,014. He was certainly
8 cross-examined on the next extract which is closely
9 linked with this one.
10

11 As to the importance of the matter, your
12 Honor, I submit it is considerable because here is
13 ITAGAKI who as a Minister of State had consented to
14 the compromise plan by which in the event of war between
15 Germany and England and France there should be a kind
16 of nebulous state which varied in interpretation
17 between benevolent neutrality and non-active participa-
18 tion in war. Here ITAGAKI --

19 THE PRESIDENT: Can you use his doubts,
20 indecision, or vacillation against him?

21 MR. COMYNS CARR: But your Honor, what he
22 then shows is that although he had consented, reluctantly
23 apparently as previous extracts have shown, to that
24 compromise here he is saying that there must be an
25 all out military alliance.

1 THE PRESIDENT: By a majority the objection
2 is overruled and the document admitted on the usual
3 terms.

4 CLERK OF THE COURT: Prosecution document
5 3150-336 will receive exhibit No. 3807 for identifica-
6 tion only; the excerpt therefrom, being prosecution
7 document 3150-336B will receive exhibit No. 3807-A.

8 (Whereupon, the document above re-
9 ferred to was marked prosecution exhibit No.
10 3807 for identification, the excerpt there-
11 from being marked prosecution exhibit No.
12 3807-A and received in evidence.)

13 MR. COMYNS CARR: (Reading) "Furthermore, the
14 /Foreign/ Minister talked about the details of the
15 Five Ministers' Conference of the 8th" -- that is
16 of August, 1939 -- "The Premier, to begin with, stood
17 up and said, 'Yesterday the War Minister visited me
18 and explained the Army proposal. We have been making
19 efforts along the pre-arranged plan simply because we
20 have recognized the necessity of a treaty. Then
21 /yesterday/ the War Minister said that this proposal
22 did not deviate from the pre-arranged plan, but I, for
23 my part, could not think so. If any of you members of
24 the Cabinet have anything to ask, please ask questions
25 as much as you like.' These introductory remarks of

1 the Premier were followed by various questions from
2 the Cabinet members. To sum up, the Army's contention
3 was that a change in the situation necessitated an
4 offensive and defensive alliance; as the first step,
5 however, the pre-arranged plan was to be followed;
6 in case this could not be done, the second step was to
7 be taken, that is to say, an offensive and defensive
8 alliance was to be concluded. The Premier then asked
9 the War Minister what on earth the latter himself thought.
10 The War Minister replied to the effect that he was a
11 State Minister on the one hand and at the same time the
12 War Minister on the other and that it was quite true
13 that he, as a State Minister, consented to the pre-
14 arranged plan being followed, but, as a representative
15 of the general opinion of the Army, he consented also
16 to the second step being taken" Then, he said that in
17 his (the Foreign Minister's) opinion, it appeared that
18 either there was still some leeway on the unconditional
19 alliance or that ITAGAKI would be ousted."

20 Next I offer in evidence IPS document No.
21 3150-336C of 12 August 1939 which was immediately before
22 the announcement of the non-aggression pact between
23 Germany and the U.S.S.R. which in fact caused the
24 resignation of the HIRANUMA Cabinet although that
25 resignation seems to have been under discussion earlier.

1 It is a statement by KIDO to HARADA that HIROTA's
2 opinions in relation to the J's views on the military
3 alliance with Germany which have been set forth in
4 excerpt 336B. I should have said "about HIROTA's
5 opinions." Both of these were put to the witness
6 ARITA at pages 30,014 to 16.
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THE PRESIDENT: Mr. Yamaoka.

1 MR. YAMAOKA: May it please the Tribunal,
2 I object to the tender of this document on the ground
3 that it is unimportant and has no probative value
4 for the following reasons:

5 In the first place, Mr. HIROTA at this
6 time held no official position and was out of office
7 since May, 1938. Chapters 336, 337, and 338 of
8 these memoirs deal with the machinations of the
9 various parties pending the fall of the HIRANUMA
10 Cabinet and the formation of the ABE Cabinet, and
11 I respectfully submit that unless these three
12 chapters are read together a complete understanding
13 of the meaning of this excerpt cannot be obtained.
14 However that may be, these chapters disclose that
15 during the course of these proceedings the various
16 parties conferred with each other with a view to
17 finding a succeeding premier, and Mr. HIROTA was
18 considered. However, at page 2620 of this same
19 document the Tribunal will find that owing to the
20 ostracism by the Army General Staff and an expulsion
21 movement commenced by the Japanese Army, Mr. HIROTA
22 finally declined to accept office and he did not
23 take the office of premiership.
24
25

MR. COMYNS CARR: Your Honor, I have no

1 objection to reading, if a document is admitted, any
2 passage my friend wants which is closely connected
3 with it, but I do object to his reading as part of
4 his argument on an objection some other passage in
5 the diary which in this particular case happens to be
6 sixteen pages further on. I haven't even been able
7 to check it.

8 MR. YAMAOKA: If your Honors please --

9 THE PRESIDENT: KIDO, according to our reading
10 of this document, says in the first place he met
11 HIROTA the other day; and then later, "I have not met
12 HIROTA yet." The inverted commas show that HARADA did
13 not make the last statement.

14 MR. COMYNS CARR: Your Honor, I think the
15 translator's note in the 5th line, "He, KIDO, met
16 HIROTA . . ." I would like to omit this translator's
17 note. It is clearly wrong. "He, KONOYE," it should be.

18 THE PRESIDENT: You are still caught by the
19 inverted commas.

20 MR. COMYNS CARR: Those, your Honor, I think
21 are quite correct. You see, the whole thing from the
22 words, "When I met KONOYE," in the second line to the
23 end is a statement by KIDO. The first part of it is
24 reporting what KONOYE had told him, and the second part
25 is stating his own opinion.

1 THE PRESIDENT: The discrepancy is still un-
2 explained. It is not apparent; it is real.

3 By a majority the objections are sustained and
4 the document rejected.

5 MR. COMYNS CARR: I offer in evidence IPS
6 document 3150-341A to contradict the statement of War
7 Minister ITAGAKI, page 30,477, lines 16 to 25, that he
8 did not delay seeking the approval or advice of the
9 Five Ministers' Conference with regzrd to the Nomonhan
10 conflict until it had neared its conclusion.

11 THE PRESIDENT: Mr. YAMADA.

12 MR. YAMADA: On behalf of the accused ITAGAKI,
13 I object to the tender of this document. According to
14 Chapter 334 under date July 25 of the HARADA memoirs,
15 there is the following entry: That ARITA on July 19
16 had a telephone conversation -- HARADA had a telephone
17 conversation with ARITA on the 19th of July, and learned
18 from the Foreign Minister that on the day before, after
19 the Cabinet Meeting, the War Minister had proposed at
20 the Five Ministers' Conference that the incident be
21 brought to a speedy conclusion through diplomatic chan-
22 nels in connection with the Nomonhan Incident.

23
24 THE MONITOR: Slight correction to the latter
25 part: That after the Cabinet Meeting the day before,
at the Five Ministers' Conference the War Minister

1 proposed the speedy transfer of the handling of the
2 Nomonhan Incident through diplomatic channels.

3 MR. COMYNS CARR: Your Honor, I must again
4 object to other parts of the diary which are not in
5 evidence being used as a part of an argument on an
6 objection. If they are relevant they can be put in at
7 some other time, or if necessary I will read them, but
8 they can't form part of an argument on an objection.

9 THE PRESIDENT: I suppose they are attempting
10 to use them because they are afraid they will not be
11 allowed to tender them in reply to you. That does not
12 justify what they are doing. They should ask you to
13 read them, Mr. Carr, and if you refuse, then they might
14 furnish some ground to have them tendered in reply.

15 MR. COMYNS CARR: Yes, your Honor. If our
16 document is admitted I have always shown my willingness
17 to read any other passage which appears to be connected
18 with the matter. This particular one happens to be
19 a year previously, or a long time previously -- no, not
20 a year previously.

21 THE PRESIDENT: We do not want to hear you
22 further, Mr. YAMADA.

23 Have you anything to add, Mr. Carr?

24 MR. COMYNS CARR: Yes, your Honor, in our
25 submission this is important because here is Admiral

1 YONAI, a member of the Cabinet, reporting that it was
2 the Japanese Army who started the Nomonhan Incident, and
3 then when they bungled it and only after they had
4 bungled it did they come to have it settled by diplomatic
5 means. It is a clear statement that ITAGAKI was re-
6 sponsible for starting the incident, and that is what we
7 rely on.

8 THE PRESIDENT: By a majority the objection
9 is sustained and the document rejected.

10 MR. COMYNS CARR: ARITA was asked at pages
11 28,981-6 concerning a conversation he had with HARADA
12 on 2 July 1940. The exact language set out in IPS
13 document No. 3150-368(B)-A was put to him. He denied
14 both the statement and the facts alleged therein. In
15 rebuttal of this, we offer the excerpt from the SAIONJI-
16 HARADA Memoirs, IPS document No. 3150-386(B)-A.

17 THE PRESIDENT: Is there no objection?

18 The document is admitted on the usual terms.

19 CLERK OF THE COURT: Prosecution document
20 3150-368(B) will receive exhibit No. 3808 for identifi-
21 cation only. The excerpt therefrom, being prosecution
22 document 3150-368(B)-A, will receive exhibit No. 3808-A.

23 MR. LAZARUS: Mr. President, I thought I heard
24 Mr. Carr say 386(B)-A. I am sorry I got up late to the
25 lectern.

THE PRESIDENT: I am told he did say 386(B)-A.

You may take your objection.

MR. LAZARUS: I was looking at the numbers;
otherwise I would have come up immediately. I am sorry.

My objection is brief, sir. The document has
no probative value, we submit. If the Tribunal will
glance through it, it seems that ARITA at two places
says HATA's attitude is suspicious. There is reference
made to some written document which is not brought
into court, and which has not been put into the record.
We, therefore, submit that the document should not be
accepted.

THE PRESIDENT: Mr. Carr.

1 MR. COMYNS CARR: Your Honor, in regard to
2 the written document, there is nothing about the
3 contents of the written document, just the mention of
4 the fact that there was a written document which is
5 not the subject of the excerpt.

6 THE PRESIDENT: By a majority, the objection
7 is sustained and the document rejected.

8 MR. COMYNS CARR: I offer in evidence IPS
9 document No. 3150-370B.

10 YONAI was asked on cross-examination, page
11 28,925, whether HATA was in favor of the resignation
12 of his cabinet. He replied: "At first he was not in
13 favor." He was asked, page 28,926, also page 28,929,
14 whether at a conference with HATA in July 1940 he asked
15 the War Minister, "Are you aware of the circumstances
16 surrounding the visit of the Vice-Minister and Chief
17 of the Military Affairs Bureau to Chief Secretary
18 ISHIWATA urging mass resignation of the cabinet?"
19 He was also asked if he did not on this occasion ask
20 the War Minister, "Then what do you think?" Also, if
21 the War Ministry did not reply, "In the long run, I
22 think it best that the cabinet resign. However, this
23 is still my personal opinion." He denied such questions
24 were asked and such answers were given.
25

1 MUTO was asked, page 33,230 and pages 33,241-2,
2 about his visit to Chief Cabinet Secretary ISHIWATA
3 on or about 11 July 1940. He admitted the visit, but
4 denied that Vice-Minister of War ANAMI was present.
5 He likewise denied that he stated, "Then there is
6 nothing to be done but to force the resignation of the
7 War Minister."

8 In rebuttal of this testimony, the prosecu-
9 tion offers this document.

10 THE PRESIDENT: Mr. Cole.

11 MR. COLE: May it please the Tribunal, I
12 object to the admission of this document on behalf
13 of General MUTO, on the ground of its lacking both
14 probative value and importance.

15 On the question of importance, I appreciate
16 that hearsay evidence is admissible, but in this case
17 on the face of the document itself it appears that the
18 hearsay is twice removed, from YONAI to YOSHIDA to
19 HARADA. Surely there is some limit even under our
20 present rules on the matter of hearsay, and this seems
21 to me to go much too far.

22 THE PRESIDENT: It all depends through what
23 channels it comes; and here it comes through the Navy
24 Minister.

25 MR. COLE: Yes, sir. On the question of

1 importance, sir, on the argument which Mr. Carr has
2 advanced, I contend that this is unimportant because
3 MUTO's admission of the meeting and his explanation
4 fully of what took place there was in answer to ques-
5 tions both by the prosecution on cross-examination and
6 from the bench.

7 THE PRESIDENT: MUTO has been represented to
8 us as a mere public servant or soldier.

9 MR. COLE: I agree with that perfectly, sir.
10 In fact, we contend that. And I should like to point
11 out that he denied that ANAMI was present, whereas if
12 ANAMI had been present at this meeting, it would have
13 been to General MUTO's advantage, because he would have
14 been in the presence of a superior.

15 May I make one further point, sir. This
16 document contradicts the testimony of prosecution wit-
17 ness TANAKA, Ryukichi, who appeared here a year ago
18 tomorrow, to the effect that the HATA resignation and
19 the implied resignation of the whole cabinet was caused
20 because the cabinet did not follow the wishes of the army
21 in the conclusion of the Tripartite Pact, an entirely
22 different reason.

23 THE PRESIDENT: By a majority, the objection
24 is overruled and the document admitted on the usual
25 terms.

1 MR. COMYNS CARR: Your Honor, that objection
2 was only taken by MUTO and relates only to the first
3 paragraph. I had agreed with my friend, Mr. Lazarus,
4 that I should answer that before he took his objection
5 to the second paragraph.

6 THE PRESIDENT: We were not aware of that.
7 At all events, the first paragraph goes in.

8 MR. COMYNS CARR: Yes, your Honor.

9 THE PRESIDENT: Mr. Lazarus.

10 MR. LAZARUS: On behalf of the accused HATA,
11 I object to the second paragraph for the following
12 reasons, if the Court please:

13 First, the Court will remember that the
14 prosecution evidence and the defense evidence is that
15 on the morning of the 16th of July at nine a.m.,
16 General HATA resigned, and this excerpt is dated the
17 20th of July. Obviously, then, this second paragraph
18 to which I am objecting was taken at least one day
19 if not more previous to the 16th of July, which would
20 make it about a week before this excerpt was written
21 down.

22
23 I am informed by Mr. Brooks that the prosecu-
24 tion has made the statement that sometimes these dates
25 that are in the upper left-hand corner have been
placed there by the prosecution, which certainly would

1 show it is the wrong date because the cabinet had
2 resigned a minimum of four days previous to this.

3 Now, on this second paragraph to which I
4 am objecting, if the Tribunal please, the second and
5 third lines show that the Prime Minister, YONAI, and
6 the War Minister retired to a separate room, and this
7 conversation supposedly took place with the two only
8 present. And the last line states: "I heard all
9 this from Navy Minister YOSHIDA." Yet, if the Tribunal
10 please, there is absolutely no connection shown as to
11 the person from whom either HATA or YONAI -- YOSHIDA
12 got this information in order to quote directly as
13 he does. YONAI denied on the stand here that he had
14 this conversation; therefore, he certainly could not
15 have told this to YOSHIDA.

16 The statement that this is a queer statement
17 on the part of HATA certainly would not be made by
18 HATA himself, consigning his own remarks to such a
19 category, to YOSHIDA. Therefore, from whom did
20 YOSHIDA get these direct quotes which are purported
21 to be written down here?

22 My friend, Mr. Carr, informs me that this
23 colloquy between the Prime Minister and the War
24 Minister is supposed to have taken place on the 12th
25 of July, although that is not apparent on the face here.

1 Granted that that be so, I conclude my objection to this
2 second paragraph, if the Tribunal please, by saying
3 that no connection has been shown as to where YOSHIDA
4 could have gotten these direct quotes. Certainly not
5 from the Prime Minister, who denied they took place.
6 Certainly not from HATA, because they are apparently
7 inimical to his interests. And certainly they could
8 not have been quoted verbatim at least eight days after
9 they had taken place, although Prime Minister YONAI,
10 the main character, denies that they took place.

11 One observation more, if the Tribunal please.
12 The Navy Minister, YOSHIDA, is in Tokyo and could have
13 been called to either confirm or to deny this statement
14 directly by the prosecution.

15 MR. COMYNS CARR: May it please the Tribunal,
16 I know nothing about the last statement. But with
17 regard to where the Navy Minister, YOSHIDA, got his
18 information at the time, it is obvious that he got it,
19 as my friend says, either from YONAI, the Premier, or
20 from HATA, the War Minister, the only two people who
21 were present at the conversation, both of whom were
22 fellow cabinet members of his. The fact that one of
23 them, namely, YONAI, has denied the conversation--

24 THE PRESIDENT: By a majority, the objection
25 is sustained and the document rejected as to the second

part thereof.

1 CLERK OF THE COURT: Prosecution document
2 3150-370 will receive exhibit No. 3808 for identification
3 only. The excerpt therefrom, being document 3150-370B,
4 will receive exhibit No. 3808-A.

5 (Whereupon, the document above
6 referred to was marked prosecution exhibit
7 No. 3808 for identification; the excerpt
8 therefrom was marked prosecution exhibit
9 No. 3808-A and received in evidence as above
10 indicated.)

11 THE PRESIDENT: Read it after the recess,
12
13 Mr. Carr.

14 We will recess for fifteen minutes.

15 (Whereupon, at 1045, a recess was
16 taken until 1100, after which the proceed-
17 ings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 MR. COMYNS CARR: I will read exhibit 3808-A
4 so far as admitted.

5 Would the Tribunal note that "20 July" at the
6 top of the page should be 12 July. 20 July is the date
7 of the chapter; 12 July is the date of the event -- the
8 conversation.

9 "12 July 1940

10 "When I met Chief Cabinet Secretary ISHIWATA,
11 he said: 'ANAMI and Chief of the Military Affairs Bureau
12 MUTO both came to me and said: "The present Cabinet must
13 amicably withdraw at any cost. Because the diplomatic
14 relations are already going ahead satisfactorily due to
15 the Four Ministers' Conference and various other connec-
16 tions, we will say nothing more about foreign policy.
17 However, in order to realize KONOYE's new political order
18 we would like the Cabinet to withdraw." When I dis-
19 approved, the Vice-Minister and the Chief of the Military
20 Affairs Bureau said: "Then, there is nothing to be done
21 but force the eventual resignation of the War Minister."
22 Saying this, they left."

23 I now offer in evidence IPS document No. 3150-
24 373-A, which was previously marked exhibit No. 3687 for
25 identification.

1 The accused TOJO, on pages 36,665 and 36,680 of
2 the transcript, denied that the decisions, which are set
3 out in this document, accurately represented the decisions
4 taken by the Four Ministers' Conference while the Second
5 KONOYE Cabinet was being organized and by the Liaison
6 Conference after the formation of the Cabinet. TOJO
7 contrasted the document with exhibits 541, record page
8 6,271, and 1310, record page 11,794.

9 Exhibit 541 relates to a different matter from
10 that recorded in the excerpt, namely, that it was a sub-
11 sequent Cabinet decision after the Cabinet was formed
12 which was, as appears from exhibit 1297, page 11,714,
13 published by the Japanese Government on 1 August 1940.
14 Exhibit 1310 only purports to be a summary of the Liaison
15 Conference decisions prepared by the Japanese Foreign
16 Ministry after the war.

17 The documents which HARADA asserts that he is
18 transcribing were, according to him, intended to be kept
19 a close secret. We submit, therefore, that this document
20 has important probative value. This is the document with
21 regard to which the witness Mrs. KONOYE gave evidence
22 that when HARADA was dictating to her, he held a docu-
23 ment in his hand.

24 THE PRESIDENT: Mr. Blewett.

25 MR. BLEWETT: If the Tribunal please, I think

the admission of this document should be objected to.

1 On page 36,671 of the record, the witness TOJO
2 states that the "diary is wrong in regard to many im-
3 portant points I am forced to believe that he
4 must have written down what he heard from miscellaneous
5 sources according to his own subjective ideas." The
6 witness also, if your Honor please, stressed many points
7 where there is a divergence between the two documents,
8 this document and exhibit 1130, and on page 36,675
9 testified, ". . . that portion is something that was
10 added by HARADA. It is not in the Liaison Conference
11 decision."
12

13 With those examples and the many others that
14 are to be found in the record, it seems to me clearly
15 that the admission of this document should be objected
16 to.

17 THE PRESIDENT: By a majority the objection is
18 overruled and the document admitted on the usual terms.

19 CLERK OF THE COURT: Prosecution document
20 3150-373-A, previously marked exhibit No. 3687 for
21 identification only, will be marked as received in
22 evidence and retain the same exhibit number.

23 (Whereupon, the document above
24 referred to, previously marked prosecution
25

exhibit No. 3687 for identification, was
received in evidence.)

- - -

MR. COMYNS CARR: (Reading)

"19 August 1940

"Furthermore, the following was the result of
the Four Ministers' Conference:

"A. In order to evolve a policy for the settlement of the China Incident, and also for dealing with the new world situation, the establishment and the strengthening of our war-time economy shall be made the basis of our domestic and foreign policy. For this purpose, the government will assume unitary leadership in all economic activities and strive to the utmost in the promotion thereof, except in cases of absolute necessity for the existence of the operating forces (military) to dispose of or assume leadership themselves.

"B. World Policy

"1. Corresponding to the sudden changes in the world situation, and in order quickly to establish a New Order for East Asia, we plan to strengthen the axis of Japan, Germany, and Italy. The East Asiatic nations must act in concert and carry out various important policies. However, we must decide on the most opportune time in the world situation and not miss it; that is,

as it concerns the method of strengthening the Axis and its time for realization.

"2. As regards relations with the Soviet Union, a Non-Aggression Pact will be concluded with her by Japan, Manchukuo, and Mongolia (length of effectiveness, five to ten years), and in addition to planning the immediate solution of pending questions, we will realize sufficient military preparedness to safeguard against defeat by Soviet Russia during the period of effectiveness of the Non-Aggression Pact.

1 "3. In order to include the English, French,
2 Dutch, and Portuguese colonies in the neighboring
3 islands and the Orient within the substance of the
4 New Order in the Far East, positive arrangements will
5 be undertaken. Moreover, we will endeavor to exclude
6 ourselves from international conferences in reference
7 to the above.

8 "4. Even though we will avoid unnecessary
9 collisions with the United States, as long as it
10 concerns the establishment of a New Order in the Far
11 East we are firmly determined to eliminate any
12 interference on her part by actual force, thereby
13 assuring the realization of our policy.

14 "The above were the items which were discussed
15 by the Premier," that is, KONOYE "and the three State
16 Minister; MATSUOKA, YOSHIDA and TOJO, while the
17 Cabinet was in the process of being organized. These
18 were the fundamental policies for organizing the new
19 Cabinet.

20 "At the liaison meeting between the Imperial
21 General Headquarters and the government during July,
22 the points presented by the Imperial General Headquarters
23 on the solution of the situation consistent with the
24 transition of world affairs, were as set forth in the
25 policies as follows:

1 "The Empire, faced with the changed state
2 of world affairs, will improve its foreign situation,
3 accelerating the settlement of the China Incident,
4 and together with this, it will seize the most
5 opportune time to solve the problem of the Southern
6 region. In case the settlement of the China Incident
7 cannot be made as yet, the changing of our attitude
8 by laying stress on our Southern region policy shall
9 be decided taking into consideration the various
10 domestic and foreign situations. The various
11 preparations necessary for coping with the above two
12 items will be given the utmost acceleration."

13 We tender in evidence IPS document 3150-374B
14 which is an excerpt from the SAIONJI-HARADA Memoirs
15 corresponding to the entry of September 1, 1940, pages
16 2921-23, which records a conversation between MUTO
17 and Captain TAKAGI of the Navy Affairs Bureau during
18 which MUTO related how the Army exerted all efforts
19 to induce the dissolution of the existing political
20 parties and the formation of one "Pro-Army Party"
21 (Shingunto) to be led along according to Army desires,
22 and how this plan suffered a blow when Premier
23 KONOYE's proclamation was published in the papers.

24 THE PRESIDENT: Mr. Cole.

25 MR. COLE: May it please the Tribunal, on

1 behalf of General MUTO I object to the admission
2 of this document; first, not on the customary ground,
3 but on the matter of ~~Ly~~ inability at least to understand
4 it.

5 This document is a glaring example of the
6 defects which apply to the whole of the SAIONJI-HARADA
7 Memoirs, at least the examples which have been presented
8 here. It is completely unintelligible in the Japanese,
9 even for the Japanese themselves.

10 In order to avoid the confusing problem of
11 submitting it to the Language Arbitration Board, I
12 approached Mr. Comyns Carr last Thursday pointing out
13 my objections which I would like to state briefly here.

14 May I respectfully suggest, first of all, that
15 Captain TAKAGI, who is mentioned in the first line,
16 according to earlier prosecution documents is a Navy
17 Captain. I consider that important in General MUTO's
18 behalf.

19 Starting with the fifth line, the entire
20 balance of the document purports to be a quotation of
21 Captain TAKAGI. He in turn starts off by quoting
22 General MUTO. By the time he finishes up -- and the
23 matter is still in quotation marks -- it is quite
24 obvious that he is no longer quoting General MUTO but
25 giving his own opinions and his own prognostications.

1 We have tried earnestly in our office to break down
2 that supposed quotation into its proper and realistic
3 parts, and to the best of our information the only
4 direct quotation of General MUTO contained here ~~and the~~
5 first two sentences running from line 5 to line 10. The
6 next few following lines are at the very best nothing
7 but an indirect quotation.

8 Then follows what appear to be the indirect
9 quotations or at least the opinions of directors of
10 bureaus other than the Military Affairs Bureau to
11 which General MUTO was attached. And then, as I have
12 said, Captain TAKAGI finishes up by giving his own
13 opinions and surmises.

14 I submit, if the Tribunal please, that it is
15 completely unfair to offer a document which is as mis-
16 leading as this against an accused when the Japanese
17 themselves cannot make sense of it.

18 My Japanese counsel corrects me, if your Honors
19 please, to say that the last several lines of the
20 document represent HARADA's opinions to the best of
21 their information.

22 MR. COMYNS CARR: May it please the Tribunal,
23 I must again protest against attempts to influence
24 the decision of the Tribunal by statements as to the
25 opinions of unknown Japanese persons as to this diary.

1 THE PRESIDENT: If I thought that for one
2 minute, Mr. Carr, I would not wait for you to point
3 it out. I would deal with Mr. Cole myself. I think
4 his point was to get us to refer to the Language
5 Arbitration Board if we had a doubt.

6 MR. COMYNS CARR: Your Honor, of course to
7 that we should have no objection if the Tribunal
8 thought it proper; and indeed my friend is entitled
9 to do that, either before or after it is admitted, as
10 your Honor's have often pointed out without asking the
11 Tribunal to do so.

12 Secondly, I fail to understand why the fact
13 that Captain TAKAGI was a member of the Naval Affairs
14 Bureau should make him a less reliable informant than
15 anybody else.

16 With regard to my friend's alleged difficulties
17 of construction, it is quite clear from the inverted
18 commas that the whole of it from the fifth line onwards
19 is the statement of TAKAGI. It is also clear, in my
20 submission, as a matter of construction, that the whole
21 of it is a summary by TAKAGI of the information which
22 he obtained from MUTO. But that is a matter of
23 construction, which is for the Tribunal, if they admitted
24 the document, with such assistance as they may get from
25 the Language Arbitration Board. In my submission, the

1 difficulties which my friend says he feels in under-
2 standing it are no reason for not admitting the
3 document.

4 THE PRESIDENT: No.

5 MR. COMYNS CARR: At the most they would be
6 a matter of the weight which the Tribunal would
7 attach to it when admitted. In my submission, the
8 subject matter is clearly important.
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1 THE PRESIDENT: It looks as though the whole
2 thing was stated by MUTO.

3 MR. COMYNS CARR: Yes, your Honor, that is
4 how I read it.

5 THE PRESIDENT: The invorted commas exclude
6 HARADA.

7 MR. COLE: Sir, I have no further argument,
8 but I do want to make one observation if I may.

9 THE PRESIDENT: If you overlooked something,
10 we may be generous and let you state it.

11 MR. COLE: In connection with the question
12 of translation and interpretation, I think my good
13 faith has been questioned and I don't propose to let
14 it go unquestioned.

15 MR. COMYNS CARR: Oh, no, not at all.

16 THE PRESIDENT: Your good faith is not in
17 doubt.

18 MR. COMYNS CARR: I am making it quite clear
19 that I have raised no such suggestion in any way.

20 MR. COLE: Sir, I want to repeat that I took
21 this document to Mr. Carr last Thursday for the spe-
22 cific purpose of avoiding the need of going to the
23 Arbitration Board. We have had many confusing and
24 painful experiences over the question of reference,
25 and that is exactly what I was trying to avoid.

1 THE PRESIDENT: By a majority the objection
2 is overruled and the document admitted on the usual
3 terms.

4 CLERK OF THE COURT: Prosecution document
5 3150-374 will receive exhibit No. 3809 for identifica-
6 tion only; the excerpt therefrom being 3150-374B will
7 receive exhibit No. 3809-A.

8 (Whereupon, prosecution document
9 No. 3150-374 was marked prosecution exhibit
10 No. 3809 for identification; the excerpt there-
11 from, prosecution document No. 3150-374B, was
12 marked prosecution exhibit No. 3809-A and
13 received in evidence.)

14 MR. COMYNS CARR: The date, your Honor, is
15 shortly before the first of September, 1940. I do not
16 have it exactly.

17 (Reading): "I met Captain TAKAGI again on
18 the train and heard from him of the conversation between
19 Military Affairs Bureau Chief MUTO and Captain TAKAGI
20 which took place at the meeting of the Preparations
21 Committee. (TAKAGI related the following): 'According
22 to MUTO's story, the leading element of the new organ-
23 ization regardless of its title, is actually a
24 political association of political parties. Therefore,
25 MUTO said it was not desirable that the Army

this movement will be rendered impotent thereby.

1 Thus, in this manner, the other directors, were all in
2 agreement with my proposal. These are all superficial
3 reasons and the inner purposes of the Army's conten-
4 tions must be clarified. The Army had been exerting
5 all its efforts to induce the dissolution of already
6 existing political parties. The Sokushin Doshikai
7 /T.N. Promotion Association/ which had been dissolved,
8 however, does not have much of a voice in the Prepara-
9 tions Committee. As a result, they have become very
10 fidgety and uneasy. On the other hand, the Army
11 planned to unite the political parties into one unit
12 and to create a so-called "Pro-Army Party" /T.N.
13 Shingunto/. They planned to lead them along accord-
14 ing to their own wishes. Their plan received a blow
15 when Premier KONOYE's proclamation was published in
16 the papers. KONOYE got the jump on the Army, whereas
17 they had planned to utilize him as a robot.'"

18 I now offer in evidence IPS document 3150-375A
19 of about the 5th of September 1940, a statement by
20 KIDO of his views as to the powers of the Emperor,
21 which was put to him at page 31,576.
22

23 THE PRESIDENT: Mr. Logan.

24 MR. LOGAN: If the Tribunal please, my friend
25 said this is a statement by KIDO. Apparently it is a

1 THE PRESIDENT: By a majority the objection
2 is overruled and the document admitted on the usual
3 terms.

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9 No. 3150-374 was marked prosecution exhibit
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12 marked prosecution exhibit No. 3809-A and
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18 the train and heard from him of the conversation between
19 Military Affairs Bureau Chief MUTO and Captain TAKAGI
20 which took place at the meeting of the Preparations
21 Committee. (TAKAGI related the following): 'According
22 to MUTO's story, the leading element of the new organ-
23 ization regardless of its title, is actually a
24 political association of political parties. Therefore,
25 MUTO said it was not desirable that the Army

1 participate in such a thing which possesses such
2 characteristics. However, the arguments have changed
3 at this time, and when practical applications are
4 considered, it is necessary to delegate strong political
5 powers to the nucleus of the new organization.
6 In order to do this, it is necessary to appoint party
7 members. The opinions of a great number of other
8 directors are that this new organization is one in
9 which the military, the government authorities, and
10 people must unite in order to construct a country
11 with powerful national defense as clearly contained
12 in the proclamation of the Premier. It is not like
13 the politics of former times when there were various
14 disagreements concerning theoretical policies, and
15 which were struggles for selfish interests. This
16 includes former politics, economy, education, and
17 all other aspects of national life. Not only this,
18 but this present movement is not one which arose from
19 the masses. Rather than that, the actual situation
20 is such that the Military and the Government authorities
21 must do the leading and spread the movement. From these
22 viewpoints, the nucleus of the new organization is not
23 appropriate. Also the fact that the Army and Navy,
24 would withdraw does not signify that this new movement
25 will succeed. On the contrary, there is a fear that

this movement will be rendered impotent thereby.

1 Thus, in this manner, the other directors, were all in
2 agreement with my proposal. These are all superficial
3 reasons and the inner purposes of the Army's conten-
4 tions must be clarified. The Army had been exerting
5 all its efforts to induce the dissolution of already
6 existing political parties. The Sokushin Doshikai
7 /T.N. Promotion Association/ which had been dissolved,
8 however, does not have much of a voice in the Prepara-
9 tions Committee. As a result, they have become very
10 fidgety and uneasy. On the other hand, the Army
11 planned to unite the political parties into one unit
12 and to create a so-called "Pro-Army Party" /T.N.
13 Shingunto/. They planned to lead them along accord-
14 ing to their own wishes. Their plan received a blow
15 when Premier KONOYE's proclamation was published in
16 the papers. KONOYE got the jump on the Army, whereas
17 they had planned to utilize him as a robot."

19 I now offer in evidence IPS document 3150-375A
20 of about the 5th of September 1940, a statement by
21 KIDO of his views as to the powers of the Emperor,
22 which was put to him at page 31,576.

23 THE PRESIDENT: Mr. Logan.

24 MR. LOGAN: If the Tribunal please, my friend
25 said this is a statement by KIDO. Apparently it is a

1 statement by HARADA, but the source of HARADA's
2 information is neither disclosed in the excerpt nor
3 in SCAP's translation of the HARADA Memoirs. In other
4 words, it doesn't appear where HARADA got his informa-
5 tion. Mr. Comyns Carr suggested MATSUDAIRA but SCAP's
6 translation shows MATSUDAIRA's conversation with
7 HARADA ended with quotation marks in the paragraph
8 prior to the one from which this excerpt was taken.
9 There is nothing to show that HARADA was present at
10 the conversation between the Lord Keeper of the Privy
11 Seal and the Emperor, and in any event the entire
12 subject matter is unimportant and of no probative
13 value.

14 From what I can gather from the Memoirs,
15 apparently there was some discussion as to whether
16 MATSUOKA had been the proper person to have appointed
17 as Foreign Minister.

18 I submit it has no importance at this stage
19 of the proceedings.

20 THE PRESIDENT: Mr. Carr.

21 MR. COMYNS CARR: May it please the Tribunal,
22 in my submission the diary does show, as a matter of
23 fact, that the source of the information was MATSUDAIRA
24 but in any case, in my submission, that is unimportant.
25

MR. LOGAN: If the Tribunal please, sir, the

1 diary clearly shows that the quotation marks of what
2 MATSUDAIRA was telling HARADA ended the previous
3 paragraph, and there are no quotation marks in this
4 showing that MATSUDAIRA told HARADA this.

5 THE PRESIDENT: By a majority the objection
6 is upheld and the document rejected.

7 MR. COMYNS CARR: I now offer in evidence
8 my last excerpt from this diary, IPS document 3150-378A,
9 of 20th October 1940 relating to the manner in which
10 KIDO and KONOYE persuaded the Emperor to accept the
11 Tri-Partite Pact and KIDO's reasons for concealing it
12 from Prince SAIONJI, which was put to him at pages
13 31,571-5.

14 THE PRESIDENT: Mr. Logan.

15 MR. LOGAN: With respect to this, if the
16 Tribunal please, in the first paragraph there was some
17 conversation that HARADA is supposed to have had with
18 somebody where he had explained certain things and
19 still had his doubts as to other things. The second
20 paragraph is HARADA's own understanding as to certain
21 matters which are unimportant in and of themselves.
22 With respect to the third paragraph, Marquis KIDO has
23 testified on the stand and it appears from other
24 evidence in the case that this question of the Tri-
25 Partite Alliance was undertaken by MATSUOKA in secrecy

from many people, even his own office.

1 KIDO's testimony in his diary shows that he
2 didn't know about it until September 12, and it was
3 passed within a week or a few days after that. One
4 of the accused testified that this entire Pact was put
5 through within twenty days from the time it started.
6 I fail to see how there is any importance attached to
7 KIDO's failure, if there was a failure, to tell the
8 Genro about this matter as he himself didn't know
9 about it, as I say, until September 12 or 14.

10 I notice that this entry is about a month
11 after the Tri-Partite Pact was signed and the record
12 clearly shows that Prince SAIONJI died the next month.
13 I understand he was quite sick in about October.
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1 THE PRESIDENT: By a majority the objection
2 is overruled and the document admitted on the usual
3 terms.

4 CLERK OF THE COURT: Prosecution document
5 3150-378A will receive exhibit No. 3810.

6 (Whereupon, the document above
7 referred to was marked prosecution exhibit
8 3810 and received in evidence.)

9 MR. COMYNS CARR (reading): "20 October 1940.

10 "... Next, I explained the circumstances under
11 which the recent Tripartite Pact was concluded. I
12 still have my doubts as to how the then Lord Keeper
13 of the Privy Seal and the Prime Minister explained the
14 matter to His Majesty. SAIONJI is also greatly doubt-
15 ful as to how they explained the matter and obtained
16 the Imperial sanction, for His Majesty had been abso-
17 lutely against it and had always been saying that he
18 would never give his consent.

19 And the outline of the matter which I under-
20 stand from what KIDO and KONOYE explained to me was
21 that in short the Navy agreed to it and that finally
22 both the Foreign and the Prime Ministers also explained
23 to His Majesty more or less in the line that there was
24 no other step to take towards the U.S.A. and the only
25 measure to keep the U.S.A. out of war was the conclu-

sion of a Japanese-German-Italian Military Alliance.

1 However, when we think of His Majesty's august wish
2 and the particulars up to the present, Prince SAIONJI
3 feels that he has no excuse to make. And furthermore,
4 when we consider His Majesty's innermost feelings, we
5 are filled with an almost unbearable feeling of trepi-
6 dation. As to the above matter, Minister of the Im-
7 perial Household MATSUDAIRA said, sometime ago, 'Al-
8 though I do not directly intervene in political affairs,
9 every time I go into His Majesty's presence, His
10 Majesty showed indefinable regret,' and showed deep
11 sympathy for His Majesty.

12
13 "As to the conclusion of the recent Tripartite
14 Pact, Prince SAIONJI was kept in complete ignorance
15 and it came as a complete surprise. As for me, I
16 heard from naval sources that there was going to be a
17 September Imperial Headquarters Liaison Conference on
18 the very day it was going to be held. I telephoned
19 KONOYE from Osaka around eight o'clock in the evening.
20 KONOYE answered through the phone that 'he had just
21 returned home from the Liaison Conference, it having
22 just ended. The Navy had finally consented and now
23 the agreement could be concluded.' The following day
24 I met KONOYE and heard the general circumstances from
25 him, but the most important point of how they were able

1 to obtain the Imperial sanction was not mentioned.
2 Then I spoke to the Lord Keeper of the Privy Seal and
3 asked, 'Why did you not tell us beforehand? If there
4 was something wrong with the GENRO, such as his being
5 dull or ill or lacking sense, it would be unnecessary
6 to tell anything. However, under the present situa-
7 tion, it is very regrettable that not a word was said
8 to the GENRO on such an important problem and which
9 directly concerns the fate of our country.' To this
10 KIDO replied, 'I felt too sorry for Prince SAIONJI,
11 so I did not tell him.' I admonished KIDO rather
12 severely, saying, 'This is a problem above such private
13 sentiments. Actual facts are facts. However opposed
14 he might be to it, or however sorry you might feel for
15 him, you must report all that you have to. That is
16 your duty towards His Majesty.' KIDO said that 'hence-
17 forth he would report all that he could' and that was
18 all we said about the matter."

19 Your Honor, I should now like to inform the
20 Tribunal of the progress which has been made in the
21 matter which we were directed to undertake of procur-
22 ing for the inspection of the defense the two sets of
23 documents which, your Honor will remember, were called
24 A and B; namely, A, the original transcription of
25 HARADA's original notes, containing the comments or

1 corrections or alterations of SAIONJI; and B, the fair
2 copy that was made. We have succeeded in obtaining
3 from MATSUDAIRA the whole of B and the whole of A with
4 two exceptions, namely, Chapters 51 to 100 inclusive
5 and Chapters 226 to 381 inclusive, that is, the whole
6 of the last part of the diary from some date in 1937
7 until it ended in 1940. It appears now that those
8 latter chapters covering that period are and have been
9 ever since November last in the possession of KIDO's
10 counsel. I say KIDO's counsel advisedly, because I
11 understand my friend Mr. Logan was not personally aware
12 of the fact.

13 THE PRESIDENT: Who is counsel with Mr.
14 Logan?

15 MR. COMYNS CARR: Your Honor. I am afraid I
16 don't know, but I understand that KIDO's son is amongst
17 those assisting him.

18 We ask that those be handed over. (Pause) I
19 understand they have been handed over this morning,
20 your Honor.

21 With regard to Chapters 51 to 100, we have not
22 so far been able to trace what has become of them, but
23 we asked defense counsel to inquire into the question
24 whether any of them is in the possession of any of
25 those counsel, and if so, to hand them over.

1 Now that we have got, as I say, the whole of
2 B and large parts of A, it appears that I was mistaken
3 in informing the Tribunal that the thing which had
4 been photostated was B, the fair copy. It is in fact
5 A.

6 THE PRESIDENT: Will that show the corrections
7 made by Prince SAIONJI?

8 MR. COMYNS CARR: I was coming to that, your
9 Honor. It does. It shows corrections made by HARADA
10 on Mrs. KONOYE's original transcription, and also some
11 corrections made by SAIONJI where he used, I think it
12 is, a red pencil actually -- at all events, something
13 which the photostat would reproduce. Closer examina-
14 tion, however, has disclosed that in some places
15 SAIONJI used a very light pencil which the photostat
16 failed to pick up. Those are now being examined. So
17 far nothing of any importance has been discovered in
18 any of them.

19 THE PRESIDENT: What period is covered by the
20 parts still missing, that is, Chapters 51 and on?

21 MR. COMYNS CARR: I am sorry, your Honor, I
22 haven't got that information. 1931 to 1932, I think
23 myself. We have got parts of 1931. In fact, I think
24 we have most of 1931. It is probably 1932 to 1933.
25 Almost all of these pencilled notes which we have dis-
covered are merely spelling mistakes which SAIONJI

1 meticulously corrected. But we are showing to the
2 defense everything that we find in that respect, and if
3 anything is found relating to any excerpt that we put
4 in, any note by SAIONJI which has not been reproduced
5 which either party thinks is of the slightest import-
6 ance, the attention of the Tribunal will be drawn to
7 it when the examination is complete.

8 THE PRESIDENT: We will adjourn until half-
9 past one.

10 (Whereupon, at 1200, a recess was
11 taken.)
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AFTERNOON SESSION

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1 The Tribunal met, pursuant to recess, at 1330.

2 MARSHAL OF THE COURT: The International
3 Military Tribunal for the Far East is now resumed.

4 THE PRESIDENT: Captain Kraft

5 LANGUAGE ARBITER (Captain Kraft): If the

6 Tribunal please, although the Language Arbitration

7 Board finds no consequential errors the following al-

8 terations are submitted. Reference exhibit No. 3789-A,

9 page 3. Delete lines 1 to 6 and record page 37,725,

10 lines 10 to 18 and substitute: "Moreover, according to

11 what KIDO said on or about the evening of the 12th, two

12 or three days ago, since Prince CHICHIBU asked me to

13 'come over by all means.' I called on him at his palace.

14 Prince CHICHIBU expressed his views as though repre-

15 senting the Army General Staff, questioned me: 'Why

16 does the Government not quit the war immediately?'"

17 Line 13 and record page 37,726, line 3: Delete

18 "eliminating" and substitute "liquidating."

19 Line 14 and record page 37,726, line 4:

20 Delete "standpoint" and substitute "spiritual viewpoint."

21 Line 16 and record page 37,726, line 8: De-

22 lete "look grave" and substitute "now change our atti-

23 tude."

Line 31 and record page 37,726, line 4:

1 Insert after the word "firm" the words "and carefully."
2

3 THE PRESIDENT: Thank you, Captain Kraft.

4 Mr. Comyns Carr.

5 MR. COMYNS CARR: Your Honor, with reference
6 to the question the Tribunal asked me this morning about
7 the period covered by the missing volumes, I find it
8 is from the beginning of September 1932 to the end
9 of September 1933, and the excerpts introduced --
10 admitted in evidence during that period are exhibits
11 3764-A to 3773-A inclusive. I might respectfully sug-
12 gest that further discussion of the matter might be
13 postponed until both parties have completed their ex-
14 amination of the documents.

15 THE PRESIDENT: Captain Brooks.

16 MR. BROOKS: If the Tribunal please, as I
17 understand Mr. Carr is now merely reporting the pro-
18 gress made in compliance with the Court's instructions,
19 and I assume that as soon as the prosecution completes
20 going over these documents with the witness that the
21 witness will be made available for cross-examination
22 and the documents will be produced before the Tribunal.
23 I understand that that examination is practically
24 completed and I think it is urgent that the documents
25 be lodged and properly marked for identification

before this Tribunal at the earliest possible date.

1 I would like, if the Court will allow me, I
2 would like to have the witness for cross-examination
3 to first identify these documents. I would like to
4 have her identify them and ask her some questions
5 about them so when I start a thorough inspection of
6 them it will be with a reasonable basis knowing on
7 which documents I will form my discussion before the
8 Court later on. To make it clearer, after the witness
9 has identified what we have talked of as volume A and
10 volume B and shows the connection with the photostat
11 copy which we have called volume D, I would then like
12 a brief period for examination and comparison of these
13 documents and an inspection to be made, and then to
14 recall the witness because at the present time she is
15 the only one that has that knowledge. I can't tell
16 from examination myself, but I think that --

17
18 THE PRESIDENT: After you have had an oppor-
19 tunity to consider the position it may not be necessary
20 to recall that lady or to hear another word in this
21 Tribunal about that HARADA Diary. We are wasting a
22 lot of time, perhaps about nothing at all.

23 MR. BROOKS: My submission, your Honor, is
24 that it will make the cross-examination much briefer
25 and closer to the points involved if they are identified

1 first and then I have my inspection before I continue
2 the cross-examination.

3 The other point: I understand that the prose-
4 cution also have the original of the SATOMI -- of the
5 group that this man SATOMI corrected for publishing in
6 book form in their office, and I would like to have
7 those produced and identified so that when I get ready
8 to discuss before this Tribunal we will know exactly
9 which documents we are talking about when we talk about
10 the original of the photostat.

11 THE PRESIDENT: For the time being SATOMI's
12 contributions are not relevant. Before you make any
13 further contribution to this discussion, Captain Brooks,
14 we want you to look at A and B and satisfy yourself. If
15 it is necessary to recall Mrs. KONOYE we shall do so.

16 MR. BROOKS: I have seen, if your Honors please,
17 what is purported to be volumes A and B in Mr. Monaghan's
18 office, investigator for the prosecution, and also
19 SATOMI's version, original, all three in the same chest,
20 and that is why I think it should be apparent that they
21 should be produced here and given separate identifica-
22 tion numbers for the purpose of discussion before this
23 Tribunal.

24 THE PRESIDENT: The Court takes a different
25 view.

1 Have you any more of these HARADA Diary
2 excerpts to offer, Mr. Carr?

3 MR. COMYNS CARR: No, your Honor.

4 I was going to say that to save the time of the
5 Tribunal and to help my friend we are quite ready to
6 have the lady present when he examines the documents
7 so that he can there and then ask her to identify any-
8 thing he wants instead of taking up the time of this
9 Tribunal.

10 MR. BROOKS: The matter has been suggested by
11 one counsel as being one for chambers hearing, but
12 I think inspection of these documents by this witness
13 should be made in the presence of the Court so that
14 her answers at the time they are handed to her can be
15 made a matter of record, because I think it will be a
16 matter of vital importance.

17 THE PRESIDENT: Further discussion of this
18 question is adjourned sine die.

19 MR. BROOKS: If the Tribunal please --

20 THE PRESIDENT: It is adjourned sine die.
21 You didn't hear me, apparently, Captain Brooks.

22 MR. BROOKS: May I apply in chambers then for
23 further hearing on this?

24 And I have another matter on another document.
25 It is on exhibit 3801-B which had been referred to the

1 Translation Section, the Arbitration Board. In order
2 to understand the excerpt the next sentence following
3 the excerpt itself as appears in the photostat needs
4 to be read. Now, Mr. Carr has read the third sentence
5 following, but the first sentence following when cor-
6 rectly translated, we submit, states that this excerpt
7 is the Army's opinion or solution and not KOISO's. And
8 I think that the Language Section can bear me out on
9 that if the Court will allow them to go to the original
10 of the photostat from which this excerpt is taken.

11 MR. COMYNS CARR: I have no objection if my
12 friend wants to put in another sentence.

13 MR. BROOKS: Then I may ask, I suppose, that
14 the Language Arbitration Board give us the translation
15 of the next sentence which will clarify that point which
16 is the main point in issue on the complete document,
17 whether KOISO's opinion was being given or the Army's
18 opinion.

19 THE PRESIDENT: The Language Section is advised
20 accordingly.

21 Mr. Tavenner.
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1 MR. TAVENNER: If the Tribunal please,
2 reference is made now to order list No. 6.

3 Reference is made to the testimony of OSHIMA
4 appearing at page 34,146, line 14, to page 34,148,
5 line 18. OSHIMA was asked various questions relating
6 to an alleged conference of 21 December 1938 between
7 him and Wiehl, Director of the Commerce Trade Bureau,
8 regarding preferential trade treatment to Germany.
9 OSHIMA in effect denied what took place at the alleged
10 conference. He testified that economic matters were
11 entirely in the hands of economic experts and even
12 if such matters were brought to the attention of the
13 embassy that would be done only by the experts of his
14 staff. He also testified that negotiations with Wiehl
15 were conducted in principle by the economic experts
16 on his embassy staff.

17 I offer in evidence IPS document No. 4041,
18 Item 15, a captured German document, being a memorandum
19 signed by Wiehl bearing date 21 December 1938, to show
20 that OSHIMA actively participated in the negotiations
21 and to contradict OSHIMA as to what transpired at said
22 conference. It is important because it is evidence
23 that OSHIMA had bypassed the embassy in trade negoti-
24 ations and it shows that OSHIMA was endeavoring to
25 influence trade policy in North China.

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6 to an alleged conference of 21 December 1938 between
7 him and Wiehl, Director of the Commerce Trade Bureau,
8 regarding preferential trade treatment to Germany.
9 OSHIMA in effect denied what took place at the alleged
10 conference. He testified that economic matters were
11 entirely in the hands of economic experts and even
12 if such matters were brought to the attention of the
13 embassy that would be done only by the experts of his
14 staff. He also testified that negotiations with Wiehl
15 were conducted in principle by the economic experts
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19 signed by Wiehl bearing date 21 December 1938, to show
20 that OSHIMA actively participated in the negotiations
21 and to contradict OSHIMA as to what transpired at said
22 conference. It is important because it is evidence
23 that OSHIMA had bypassed the embassy in trade negoti-
24 ations and it shows that OSHIMA was endeavoring to
25 influence trade policy in North China.

1 THE PRESIDENT: Mr. Cunningham.

2 MR. CUNNINGHAM: If the Tribunal please:

3 Before the prosecution begins its offer of the
4 entire list of documents, please permit me to say that
5 all of these documents are directed toward the case of
6 Ambassador OSHIMA. I desire at this time to make a
7 general objection to the entire group. This is done to
8 save time on the objections to the individual documents
9 if they are admitted.

10 I did have some general observations on the
11 right of the prosecution to introduce evidence at this
12 time but Mr. Logan has covered them thoroughly in his
13 detailed objections to the HARADA Memoirs.

14 His witnesses and documents in answer to the
15 ones being offered are now in Germany. The best source
16 of the information, Ambassadors Ott and Stahmer, have
17 both been repatriated, they are not available for
18 questioning on this matter and they are the ones who
19 would best know.

20 The matters contained in these documents were
21 known to the prosecution when they put on the general
22 phase of the case. Under the rules then prevailing some
23 of them might have been admitted. We would have had
24 time and opportunity to digest the documents and inves-
25 tigate the facts. Now we don't have these facilities.

1 Our case in defense which came late last year
2 was prepared in the light of the record then existing
3 and we met the charges, item by item. We think we won
4 the issue. We haven't the material available or the
5 informants now to look into these new items. Due to
6 the fact that the accused OSHIMA was five days on the
7 stand gave the prosecution ample opportunity to inquire
8 into these matters, if they were of importance and the
9 documents had probative value.

10 Due to the diversity of language between
11 the accused and the recorders of some of these docu-
12 ments, there is great likelihood of error of trans-
13 lation which cannot be checked at this late date.
14 We have absolutely no access to the authors of these
15 documents. I have lost all of my contacts in Germany
16 after this long time.

17 Military matters which were within and which
18 were without the competence of the ambassador under
19 such peculiar circumstances during the progress of a
20 war is a very complicated matter, under Japanese mili-
21 tary system. The documents presented now raise this
22 complicated issue anew and at a time when the witnesses
23 who could have explained the matters have left the
24 stand. Anyone of the accused aside from OSHIMA who
25 was in diplomacy as well as having military background

1 could have answered the matters simply if they had
2 been asked. The accused could have clarified the issues
3 when he was on the stand. To attempt now to prove
4 such matters by documents is unfair.

5 Once war broke out and Japan became a partici-
6 pant it was the duty of the ambassador to do all he
7 could to promote his country's cause. No one would
8 deny this. Proof of such an attitude is neither im-
9 portant nor necessary; such conduct is natural.

10 So we object to all of these documents on
11 list No. 6 for these reasons: they are untimely, they
12 are repetitive, they are not important and they have
13 no probative value at this stage of the proceedings.

14 Specific objections will be taken to the
15 individual documents for specific reasons.

16 (Whereupon, Mr. Tavenner approached
17 the lectern.)

18 THE PRESIDENT: We don't want to hear you on
19 the general objection.

20 MR. CUNNINGHAM: Then I should like to object
21 to document 4041, Item 15. Then I understand by your
22 remark that you permit the prosecution to go forward
23 with their proof?

24 THE PRESIDENT: We deal with each document as
25 it is tendered, Mr. Cunningham. You have helped us

1 greatly by telling us in advance what is your common
2 objection to all the documents, but we don't expect
3 Mr. Tavenner to answer that.

4 MR. CUNNINGHAM: Well, I did intimate at one
5 time that our situation is a little more peculiar than
6 the situation of the other defendants in permitting
7 the prosecution to reopen their case at this time.

8 THE PRESIDENT: Well, what is your objection
9 to this particular document, Mr. Cunningham?
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1 MR. CUNNINGHAM: It is not an original, but
2 it is shown that the original document was available,
3 and it should have been produced in two years' time.
4 The mere fact that someone wanted to retain the document
5 for unknown or unstated reasons is not sufficient for
6 its unavailability. There is no showing of the connec-
7 tion between the author of this document and the Japanese
8 Government, and it is most apparent that neither govern-
9 ment would be bound by any agreement, chatter, or diplo-
10 matic conversation between the parties to this agree-
11 ment or document. It would not be binding on either
12 of the governments or any of its leaders. It therefore
13 has no probative value. The document is merely an
14 inter-departmental communication of the German Govern-
15 ment, whose officials are not on trial here and into
16 whose doings this Tribunal has no right to make inquiry.
17 What they said to each other is so remote that we shouldn't
18 waste the tail end of this trial on such documents.

19 Now, there is quite new matter presented
20 through this document and the subject matter mentioned
21 in September, 1946, again in the Tripartite matters, and
22 certainly the prosecution had a right to inquire and
23 did, during their case and our case, into these ques-
24 tions if they wished. Such a German document does not
25 come under any provisions of the Charter: at least the

prosecution has not qualified the document.

we submit that this document deals with economic negotiations between two sovereign nations and has no bearing on the relations between these accused on trial here for conspiracy, and has no close connection in the cause or the effect of war, and therefore is not important. The document was not even offered to Ambassador OSHIMA for his explanation when they had it in their hands.

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: I should like to take an objection to the tender of this document on behalf of Mr. TOGO. It will be noted that in the middle of the first paragraph it refers to his, Mr. TOGO's, having originally held out hopes for this preferential treatment; that is, presumably at the time when he was Ambassador to Germany.

Now, the same man Wiehl who made this memorandum has appeared in evidence in this case on several occasions, and curiously enough exhibits 593 and 594, both memoranda by this same Wiehl on this same subject, are in direct contradiction of Wiehl's statement in the document now under consideration; for Wiehl's statements in those memoranda of conversations with Ambassador TOGO not only showed that the Ambassador did not at any time hold out hopes for this preferential treatment but that on the

1 contrary he presented proposals which in every instance
2 were declared by the German officials to be unsatis-
3 factory to them. I therefore submit that in those cir-
4 cumstances the Tribunal would, I think, be compelled on
5 assaying these documents to find them to have no
6 probative value, and therefore I submit that this one
7 should be rejected.

8 THE PRESIDENT: Mr. Tavenner.

9 MR. TAVENNER: If it please the Tribunal, I
10 think the objection lodged by counsel for OSHIMA can be
11 answered in a very few words.

12 THE PRESIDENT: The fewer, the better.

13 MR. TAVENNER: The main basis of his objection
14 is that economic relations is of no moment in the prose-
15 cution's proof. Preferential trade treatment to Germany
16 was a very vital matter.

17 THE PRESIDENT: By a majority, the objections
18 are overruled, and the document admitted on the usual
19 terms.

20 CLERK OF THE COURT: Prosecution document
21 4041, item 15, will receive exhibit No. 3811.

22 (Whereupon, the document above
23 referred to was marked prosecution exhibit
24 No. 3811 and received in evidence.)
25

MR. TAVENNER: I will read this document in

evidence.

1 "Berlin, 21 December 1938.

2 "MEMORANDUM.

3 "Today, on the orders of the Reich Foreign
4 Minister, I informed the Japanese Ambassador that the
5 Reich Minister in the Pro Memoria on German-Japanese
6 economic cooperation was holding out for a written
7 statement of our preferential status with respect to
8 third powers and was asking the ambassador to intercede
9 for a prompt ruling in favor of this. In this connec-
10 tion, I handed Mr. OSHIMA our last proposal, which I
11 had also given Mr. TOGO on 6 October of this year. I
12 added that we had definite news from Tokyo that the
13 Japanese government was ready to grant the written
14 statement on preferential treatment. Even Mr. TOGO
15 himself had originally held out hopes for this preferen-
16 tial treatment, yet later had averred that the Japanese
17 Government could not grant it. On the other hand, the
18 newly appointed ambassador to Rome, SHIRATORI, in an
19 interview on 26 October in Tokyo, also spoke of preferen-
20 tial treatment for German technology, industry and trade.
21 I further emphasized anew that on the grounds of our
22 support of Japan (recall of military advisers, stoppage
23 of military deliveries, and consequent large losses),
24 not only for political but also for economic and moral
25

1 reasons, we were entitled to a preferential treatment,
2 particularly with respect to the Americans and British
3 who had again demonstrated a reverse attitude in the
4 conflict only recently by the granting of credits to
5 China.

6 "I further brought to the attention of
7 Mr. OSHIMA the so-far unsatisfactory settlement of
8 our protests on the practical restraints on German
9 economic activity in China by the Japanese and delivered
10 to him a new memorandum dealing with the matter.

11 "The ambassador indicated complete sympathy
12 with my words. He stated, on the question of preferen-
13 tial treatment, that he had himself always worked for
14 this but that opinion was divided in Japan. The army
15 was for it, also a part of the foreign service, SHIRA-
16 TORI, for example, were for it; the opposition was to
17 be found principally among domestic economic circles.
18 On the question of the restrictions on practical eco-
19 nomic activity in China he emphasized that often mili-
20 tary considerations worked inevitably in favor of this
21 and that the ill-humor of the Japanese front /line troops/
22 over the fact that at the beginning of the conflict they
23 found the Chinese almost only with weapons made in
24 Germany might be still in evidence here and there. He
25 imparted that he had about 9 December of himself sent

1 an energetic telegraphic message to Tokyo to the effect
2 that preferential treatment should be granted in writ-
3 ing and that the practical German difficulties in China
4 should either be removed or the German officials in
5 Tokyo and in China itself informed in detail by the
6 Japanese officials on what grounds this was presently
7 not yet possible. He had also entrusted to a Japanese
8 general, who had been here recently and who should
9 have reached Tokyo again about 10 December on his return
10 journey, letters in favor of this to leading figures of
11 the Japanese Army. He promised, in view of today's
12 conversation to report again both by telegram and in
13 writing via a carrier arriving in Tokyo on 20 January."

14 Signed, "WIEHL."

15 I offer in evidence, for identification only,
16 IPS document No. 4075, item 9, a captured German docu-
17 ment, it being a telegram signed by Wiehl and sent to
18 Tokyo, bearing date 15 January 1942; and I introduce
19 in evidence IPS document No. 4075A, item 9, an excerpt
20 therefrom, for the following purposes.

21 CLERK OF THE COURT: Prosecution document 4075A,
22 item 9, will receive exhibit No. 3812 for identification
23 only.

24 (Whereupon, the document above referred to
25 marked prosecution exhibit No. 3812 for identification.)

MR. TAVENNER: I offer it for the purposes:

1 (a) To contradict the testimony of OSHIMA,
2 page 34,209, line 22, to page 34,210, line 10, in which
3 he denied having received from the Japanese Government
4 instructions which permitted him to concentrate in his
5 hands all questions in regard to the general line of
6 cooperation in a common war, and that only questions of
7 detail in the military and economic field would be
8 dealt with by the military and economic members of the
9 special commission under the Tripartite Pact; and
10

11 (b) To contradict the testimony of OSHIMA,
12 page 34,222, line 10, through page 34,223, in which he
13 took the position that his only participation in the
14 negotiations with Ribbentrop on 2 January 1942 regard-
15 ing the mutual use of German and Japanese economic
16 power was the delivery of a document to the competent
17 German officials.

18 This document is important because it shows
19 OSHIMA's activity beyond the ordinary duties of an
20 ambassador, and the fact that he assumed important
21 duties of the special commission under the Tripartite
22 Pact.

23 THE PRESIDENT: Mr. Cunningham.

24 MR. CUNNINGHAM: If your Honor please, I
25 would first like to object to the prosecution's making

1 long introductory speeches to their documents. The
2 introduction to this document and what they say it
3 proves is as long as the document itself, and I recall
4 being scolded quite thoroughly on that proposition
5 just a short time ago.

6 THE PRESIDENT: Set him an example of brevity.

7 MR. CUNNINGHAM: I submit that two wrongs
8 never make a right, and they are virtually arguing the
9 summation of their case here.

10 I should like to object to IPS document
11 4075-A for the following reasons:

12 First, that the purpose of the introduction
13 of the document fails to show how it meets the test
14 applied to defense documents offered here. Its proba-
15 tive value fails to appear on its face.

16 Now, this is a new matter brought up by the
17 prosecution in cross-examination, and certainly they
18 should not be permitted now to introduce more matters
19 on the basis of it being new matter raised during their
20 case.

21 The accused OSHIMA was interrogated twenty-
22 three times by the prosecution. They were not
23 interested in this matter enough to interrogate him
24 on the matter, even. It is now mentioned for the first
25 time here.

1 The original is shown to be available, but
2 is not produced here, only excerpts and parts, and
3 they had over two years for the production of this,
4 too. Why has the prosecution not produced the original,
5 and claimed still non-availability?

6 How could what a couple of Germans say to
7 each other involve Ambassador OSHIMA? What is the
8 relevancy and the connection between OSHIMA and Ritter
9 and Wiehl? That is the question this document raises.
10 The document says, "For information. Also for delega-
11 tion" -- an inter-departmental communication between
12 a couple Germans in Europe in 1942, certainly not
13 involving the question of Ambassador OSHIMA's partici-
14 pation in an agreement with these individuals here.

15 THE PRESIDENT: By a majority, the objection
16 is overruled and the document admitted on the usual
17 terms.

18 CLERK OF THE COURT: Prosecution document
19 No. 4075-A, (Item 9) will receive exhibit No. 3812-A.

20 (Whereupon, the document above
21 referred to was marked prosecution exhibit
22 No. 3812-A and received in evidence.)

23 MR. TAVENNER: It is not an inter-departmental
24 communication, if the Tribunal please. It is a tele-
25 gram of 15 January 1942, from Wiehl in Germany to Tokyo.

1 The latter may be argued probably either way, as to
2 whether it is an inter-departmental communication or
3 a telegram. I think it makes no real difference.

4 (Reading) "On 2 January in a conversation
5 with the Reich Foreign Minister Ambassador OSHIMA
6 gave the information that he had been commissioned by
7 his government to concentrate in his hands for the
8 Japanese side the handling of all questions which
9 concerned the general principles of cooperation in
10 the whole field of the common prosecution of the war
11 and to speak at the proper time with the Reich Foreign
12 Minister and, in so far as Italy was interested, with
13 the Reich Foreign Minister and the Italian Ambassador
14 here." Nothing beyond purely military and economic
15 questions of detail were to be directly handled by the
16 military and economic members of the subcommissions of
17 the Tri-Partite Pact. At this conversation OSHIMA
18 delivered a memorandum, wherein it was set forth that,
19 parallel to the conversations on military cooperation,
20 concrete negotiations should soon be initiated on
21 reciprocal utilization of German and Japanese economic
22 power. While Japan was doing the utmost to facilitate
23 the delivery of East Asiatic products to Germany,
24 Germany should do everything to deliver machines,
25 munitions material and plants to Japan. To avoid

1 payment difficulties it was necessary that Germany
2 should grant Japan a total credit of one thousand
3 million yen /¥1,000,000,000/ for three years. It was
4 proposed that, until this credit was available, a
5 bridging over credit of 50 million yen for the most
6 urgent German deliveries be immediately placed at
7 disposal. Japan was ready, with the development and
8 utilization of the raw materials-rich South Sea regions,
9 which went hand in hand with the progress of the mili-
10 tary operations, to look out for Germany's interest
11 there in every possible way."

12 I offer in evidence for identification only,
13 IPS document No. 4096, a captured German document
14 consisting of a record concerning the Fuehrer's con-
15 ference with Ambassador OSHIMA on 3 January 1942 in
16 the presence of the German Foreign Minister; and I
17 offer in evidence IPS document No. 4096-A, an excerpt
18 therefrom, for the following purposes:

19 (a) To contradict the testimony of OSHIMA
20 at page 34,257, line 11, to page 34,259, line 2, in
21 which he denied certain statements made by Hitler to
22 him on 3 January 1942 relative to naval warfare in the
23 Atlantic and getting submarine war into full blast,
24 and further to contradict OSHIMA's denial that he
25 concurred in statements of Hitler with regard to the

annihilation of crews of merchant vessels; and

1 (b) To contradict the testimony of OSHIMA
2 at page 34,211, lines 1 to 17, in which he denied that
3 he told Hitler at a conference on 3 January 1942 that
4 he was empowered by the Japanese Government to discuss
5 the prosecution of the war with the German Foreign
6 Ministry.

7 THE PRESIDENT: Admitted on the usual terms.

8 MR. CUNNINGHAM: I did not know that he was
9 through with his speech.

10 THE PRESIDENT: I waited, I paused, quite a
11 long time for an objection and none came. I do not
12 think that we should allow this to occur again.
13 This has been happening nearly all day, that objections
14 have been taken late. There have been explanations
15 in some cases, but not in yours.

16 MR. CUNNINGHAM: Well, now, I can give you
17 a simple explanation if you will just let me.

18 Usually the prosecutor says what he has to
19 say and the light goes on and there is a long pause
20 for interpretation. In his case, he is giving it by
21 simultaneous translation, and you just cannot get out
22 of a habit in a minute.

23 THE PRESIDENT: We will hear you.

24 MR. CUNNINGHAM: There has been no foundation
25

1 laid for the introduction of this document on the
2 material which it covers. The document was not put
3 to Ambassador OSHIMA, nor was it put to the assistant
4 military attache or summoned for that purpose. It
5 was not shown to the accused while he was on the
6 witness stand. It is suggested that it does not
7 say what the prosecution says it carries, and, there-
8 fore, the introduction of the document certainly
9 should be confined to what the document itself says.

10 Now it is offered at quite a late date for
11 us to make any investigation into the matter. We had
12 all of Hitler's conferences and we excerpted about
13 fifty of them and we eliminated them from our part of
14 the case because we did not want to take the Tribunal's
15 time to present them; and now we are confronted with
16 these immaterial things in rebuttal. It seems rather
17 difficult to meet at this late stage of the game.
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1 Now, let me point out this one thing, if your
2 Honors please. Here is an excerpt used at Nuernberg.
3 Now, we were prohibited from using even the official
4 transcript of the words of Ribbentrop at Nuernberg be-
5 cause it was immaterial and could not be of any probative
6 value in this case, but still the prosecution offers an
7 excerpt from a document which was only used as an ex-
8 hibit there without any official transcript to show its
9 value or relevancy or materiality. They chose to wait
10 until we couldn't answer it, couldn't make investigations
11 into it, and then offer it at this time in the case. It
12 is highly unfair.

13 (Mr. Tavenner approached the lectern.)

14 THE PRESIDENT: We do not want to hear you.

15 By a majority the objection is overruled and
16 the document admitted on the usual terms.

17 CLERK OF THE COURT: Prosecution document 4096
18 will receive exhibit No. 3813 for identification only;
19 the excerpt therefrom, being prosecution document 4096-A,
20 will receive exhibit No. 3813-A.

21 (Whereupon, the document above
22 referred to was marked prosecution exhibit
23 No. 3813 for identification; the excerpt
24 therefrom being marked prosecution exhibit
25 No. 3813-A and received in evidence.)

MR. TAVENNER: I will read exhibit No. 3813-A:

1 "SECRET REICH MATTER

2 "NOTE: Concerning the Fuehrer's conversation
3 with Ambassador OSHIMA on 3 January 1942 in the presence
4 of the Reich Foreign Minister in the Wolfsschanze from
5 1615 to 1800 hours.

6 * * * *

7 "Again the Fuehrer asked the Ambassador not to
8 mention his statements to the Italians. If anything
9 were let out, all efforts would be in vain. In this
10 connection he recalled 22 June. He added that he would
11 discuss military affairs only with Ambassador OSHIMA
12 personally. ****
13

14 "The Fuehrer explained to the Japanese Amba-
15 sador on the map the prospective naval war situation
16 in the Atlantic, emphasizing that he considered it his
17 most important task to get the submarine war going full
18 blast After making further explanations with the
19 aid of the map, the Fuehrer pointed out that no matter
20 how many ships the U.S.A. built one of their chief
21 problems was the personnel shortage. For this reason the
22 merchant vessels were also being sunk without warning
23 with the idea that as large a part as possible of the
24 crew should perish in consequence. If word should once
25 get about that most seamen were lost in torpedoings, the

1 Americans would soon have difficulties in recruiting new
2 people. The training of seafaring personnel took a long
3 time. We were fighting here /T.N. here struck through
4 in original/ for our existence and therefore could not
5 permit any humanitarian points of view to govern. For
6 this reason he had to give the order that in case foreign
7 seamen could not be taken prisoner, which was not for the
8 most part possible on the open sea, the submarines were
9 to surface after torpedoing and shoot up the lifeboats.

10 "Ambassador OSHIMA sincerely concurs in these
11 statements of the Fuehrer and says that the Japanese,
12 too, are forced to follow these methods. *****

13 "He, OSHIMA, was empowered by his government to
14 discuss the prosecution of the war with the Reich
15 Foreign Minister. Even though individual questions could
16 be discussed directly between the army, the air force,
17 and, above all, the navy, in his opinion it was of the
18 greatest importance that the main line /of policy/ should
19 be laid down exclusively by him and the Foreign Minister.
20 The same was true for the economic and political ques-
21 tions."
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General KAWABE at page 33,779, line 10,
1 defined the duty of the Military Attache in the
2 Japanese Embassy in Berlin as follows:

3 "I was the official Japanese military
4 representative stationed in Berlin and my duties
5 included to convey the views and opinions of the
6 Army to the ambassador, to transmit the views and
7 opinions of the ambassador to the Army in Japan, and
8 also to report to the Army the progress of negotiations."
9

10 Exhibit 3518, page 34,238 of the transcript,
11 is a telegram of May 4, 1941, OSHIMA to MATSUOKA,
12 in which OSHIMA remonstrated against a proposed trip
13 by MATSUOKA to the United States, and requested MATSUOKA
14 to inform him of the truth of the rumor about his
15 trip by return mail. IPS document No. 1383-B(9), now
16 sought to be introduced in evidence, is a telegram of
17 May 3rd from the military attache in Germany to Tokyo
18 on the same subject matter. Exhibit 3519, page
19 34,245, line 1, is the reply from MATSUOKA to OSHIMA's
20 telegram of May 4th regarding the same subject matter
21 in which he advised OSHIMA to let the military attache
22 know about the matter.

23 Our position is that the telegram of the
24 military attache, that is, the document now handed to
25 the Tribunal, is made admissible as part of the

negotiations between Berlin and Tokyo on the ground
1 (1) that military attache in sending it was discharging
2 his official duty in transmitting to the Army the views
3 of the Ambassador, and (2) that the reply by MATSUOKA,
4 which is exhibit 3519, made sufficient reference to it
5 to constitute evidence of knowledge on the part of
6 OSHIMA of the existence of the telegram.
7

8 I offer in evidence IPS document No. 1383-B(9),
9 a telegram from the military attache to the Vice Chief
10 of May 3, 1941, bearing the seal of the Foreign Office
11 and initialled by the Vice Foreign Minister for the
12 purpose of showing the influence that was brought to
13 bear on MATSUOKA in connection with his negotiations
14 with the United States.

15 THE PRESIDENT: Mr. Cunningham,

16 MR. CUNNINGHAM: If the Tribunal please, I
17 object to the introduction of the document; in the
18 first place because the prosecution had it during their
19 own case and our case, and it is authored by BANZAI,
20 the Military Attache in Berlin who is now dead, and
21 it is a little difficult for us to investigate it at
22 this late hour.
23

24 We admit the duties of the Military Attache
25 and we admit the manner in which the Military Attache
carries on his relations with the Japanese Army. We

1 admit the relation between the Japanese Ambassador
2 and the Military Attache. We have explained all those
3 things to the Tribunal; prosecution doesn't have to
4 do it now.

5 My objection to this document is that it
6 doesn't contain anything direct, concrete or reliable
7 which would bind the accused OSHIMA although it names
8 him. This document quotes the press agency, which has
9 been totally disregarded in this trial as unworthy of
10 any probative value, and this document certainly
11 has no probative value if it quotes something of the
12 Japanese press. The thing that it emphasizes is the
13 threatened resignation of OSHIMA which isn't important.

14 THE PRESIDENT: By a majority the objection
15 is overruled and the document admitted on the usual
16 terms.

17 CLERK OF THE COURT: Prosecution document
18 1383B(9) will receive exhibit No. 3814.

19 (Whereupon, the document above re-
20 ferred to was marked prosecution exhibit No.
21 3814 and received in evidence.)

22 MR. TAVENNER: I will read the exhibit.

23 "Seal of Foreign Office.

24 "Telegram Top Secret and Personal

25 "Vice-Minister /initialled CHUICHI/

1 "May 5, 1941

2 "To the Vice-Chief from the Military Attache
3 to the German Embassy.

4 "No. 185

5 "As reported in the last telegram, Foreign
6 Minister MATSUOKA's visit to USA will produce a bad
7 influence upon the Tripartite Alliance. The recent
8 statement by ISHII, the Chief of the Publicity Bureau,
9 reported by the Domei News and the report in the Japan
10 Times implicitly confirm the said visit to the USA
11 which would greatly shock not only Germany, but also
12 the Allied /T.N. Axis/ countries thereby creating a
13 very unfavorable situation that would nullify the
14 results of Foreign Minister MATSUOKA's having expressly
15 visited Germany and Italy.

16 "Especially ISHII cannot be excused when he
17 boldly stated that Germany and Italy should be asked
18 concerning the visit to the USA. If such /a situation/
19 be left alone the problem regarding the resignation
20 of Ambassador OSHIMA may arise thereby causing a
21 fiasco in the basic problems of our foreign diplomacy.
22 I wish you would give these points your special grave
23 deliberation."
24

25 THE PRESIDENT: We will recess now for
fifteen minutes.

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(Whereupon, at 1445, a recess was
taken until 1500, after which the proceed-
ings were resumed as follows:)

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(Whereupon, at 1445, a recess was
taken until 1500, after which the proceed-
ings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Tavenner.

4 MR. TAVENNER: I offer in evidence IPS
5 document No. 4025, Item 11, a captured German docu-
6 ment, it being a memorandum by State Secretary Weis-
7 zaecker, bearing date 12 July 1941, recording a confer-
8 ence held on that date with Ambassador OSHIMA, for the
9 purpose of contradicting OSHIMA's testimony, page
10 34,288, line 6 to line 21, in which he denied having
11 advised MATSUOKA to break off negotiations with Wash-
12 ington.

13 THE PRESIDENT: Mr. Cunningham.

14 MR. CUNNINGHAM: I object to the introduction
15 of this document, for the reason that it tends to
16 prove a fact which we admit, to wit, that the German
17 Government had such an efficient news-gathering agency
18 they knew more about what was going on in Japan than
19 Ambassador OSHIMA. We admit that. That is one of
20 the statements in the document. We admit it, and
21 therefore there is no reason for proving the fact
22 that the American-Japanese negotiations were kept
23 secret from Ambassador OSHIMA. This is uncontested so
24 far as we are concerned. There is no need to prove
25 that.

1 Now, we agree it might have averted a war if
2 the Ambassador's advice had been followed and the
3 American-Japanese negotiations had been terminated
4 as the Ambassador recommended, but it is merely
5 speculation. We can't say what happened and what did
6 not happen as a result of this advice, and therefore
7 that part of the document is immaterial and of no
8 probative value.

9 THE PRESIDENT: By a majority the objection
10 is overruled and the document admitted on the usual
11 terms.

12 CLERK OF THE COURT: Prosecution document
13 4025, Item 11, will receive exhibit No. 3815.

14 (Whereupon, the document above
15 referred to was marked prosecution exhibit
16 3815 and received in evidence.)

17 MR. TAVENNER: I neglected, if the Tribunal
18 please, to state what I intended to state, that the
19 document is also introduced for the purpose of showing
20 it was OSHIMA's opinion that there was an urgent need
21 for air and naval bases in South Indo-China.

22 I will read the exhibit:

23 "Berlin, 12 July 1941.

24 "St. Sec. No. 477.

25 "The Japanese Ambassador who came to see me

1 on another matter today mentioned that he had had an
2 active exchange of telegrams recently with his foreign
3 minister. He had tried to induce him to determine the
4 center of gravity of further Japanese policy and to
5 decide between South and North, for a dispersal of
6 Japanese forces was impossible. In principle MATSUOKA
7 has agreed that OSHIMA was right without, however,
8 expressing himself concretely.

9 "I then asked the Ambassador how things now
10 stood with Indo-China. OSHIMA replied that in fact
11 the occupation of certain positions in Southern Indo-
12 China as a base for aircraft and warships was an urgent
13 Japanese need. Whether one should previously inform
14 the French Government or merely sound it out was
15 another question. OSHIMA did not consider the move
16 toward South Indo-China imminent. He named no term
17 and thought that Tokyo would probably wait for a good
18 opportunity. (The term of 17 July mentioned in wire
19 report No. 1181 from Tokyo does not seem to be known
20 to OSHIMA.)

21 "OSHIMA gave, it is true, a few opinions on
22 the further development of Japanese-American relations;
23 he was, however, evidently poorly or not at all in-
24 formed from home. He sought rather to gather some
25 news from me. I then told him that there was up to

1 now an only partially decoded report from Ambassador
2 Ott, which appeared to me to indicate that Tokyo had
3 in the meantime received news from Washington. "With-
4 out complete particulars I could not explain further.
5 On the other hand, it had struck me personally with
6 what naivete and impudence the Americans had now
7 established themselves in Iceland. Did OSHIMA assume
8 that the Americans considered their rear in the Pacific
9 Ocean as secure as the Iceland case would really lead
10 one to believe? OSHIMA answered that only /by saying/
11 that his own views on how America was to be handled
12 were known to us. He had again advised MATSUOKA re-
13 cently simply to break off the conversation with Washing-
14 ton.

15 "(I do not believe that OSHIMA is aware that
16 an answer from Washington is in Tokyo, a fact which
17 came to our knowledge first from a certain source
18 through the Italian Ambassador in Tokyo.)

19 "With this

20 "to the German Foreign Minister.

21 "WEIZSACKER"

22 At page 34,272, line 11 to line 23, OSHIMA
23 denied that he was in favor of a Japanese attack on
24 Russia, and at page 34,278, line 1 through page 34,280,
25 he denied statements attributed to him in a conference

1 with Ribbentrop on 9 July 1942 which were put to the
2 witness for the purpose of proving his state of mind
3 at that time.

4 I offer in evidence for identification only
5 IPS document No. 525, a captured German document,
6 consisting of notes concerning the conversation between
7 the Reich Foreign Minister and Ambassador OSHIMA at
8 Steinert on 9 July 1942, and I offer in evidence IPS
9 document No. 525-A, an excerpt therefrom, in contra-
10 diction of the foregoing testimony of OSHIMA.

11 THE PRESIDENT: Mr. SHIMANOUCHI.

12 MR. SHIMANOUCHI: I object to the tender of
13 this document on behalf of OSHIMA. The importance of
14 this document is to be found in the fact that it shows
15 a German desire to have OSHIMA report to Tokyo the
16 German desire to have Japan attack Russia.

17 THE MONITOR: "... the only importance of
18 this document ..."

19 MR. SHIMANOUCHI (continuing): This is only
20 a natural function of an ambassador, and therefore
21 this document is not important here or material.
22 Furthermore, OSHIMA's state of mind is not a question
23 to be tried in this Tribunal.

24 THE PRESIDENT: We certainly cannot agree with
25 the last submission.

1 By a majority the objection is overruled and
2 the document admitted on the usual terms.

3 CLERK OF THE COURT: Prosecution document 525
4 will receive exhibit No. 3816 for identification only;
5 the excerpt, being 525A, will receive exhibit No.
6 3816-A.

7 (Whereupon, the document above
8 referred to was marked prosecution exhibit
9 3816 for identification; the excerpt therefrom
10 being marked prosecution exhibit 3816-A and
11 received in evidence.)
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MR. TAVENNER: I will read exhibit 3816-A:

"REICH SECRET

"Notes concerning the conversation between the Reich Foreign Minister and Ambassador OSHIMA at Steinert on 9 July 1942.

"Reich Foreign Minister speaking/ * * *

"Vladivostok was constantly the biggest threat for Tokyo from the air -- particularly so if American bombers should be stationed there as they recently had been in China. Sooner or later in the course of war this would take place anyway, that is, if Russia were not eliminated promptly. And in regard to the 60 or 80 Russian submarines located there, according to our experience, the Russians little knew how to use these weapons. In the Baltic Sea there also were on hand a like number of Russian submarines, which never had been able to do the slightest harm. He thought that it was best to make the decision and to attack the Russians, should the Japanese army feel strong enough and be ready with its deployment in Manchuria. The Fuehrer had until now held the opinion that the Japanese, after their big successes, should first consolidate their new territories, and that our offensive in Russia should first be farther advanced, and he had thought it best that Japan should not undertake too much, so as not to endanger their own

situation. But now, after the recent so universally
1 favorable military developments in Russia and the ex-
2 periences gained there, which he had described to the
3 ambassador, he also was of the opinion that the moment
4 had come for Japan to enter the common fight against
5 Russia, providing she felt strong enough. Should Japan
6 by a rapid thrust occupy Vladivostok and possibly the
7 territory up to Lake Baikal, the Russians, on both sides,
8 would be in an extremely difficult position. The war
9 would then be practically decided, and the Tripartite
10 powers could then exert all their power against the
11 English and the Americans, who would then have no hope.

"Ambassador OSHIMA replied that he was over-
14 joyed at the developments in Russia and North Africa as
15 depicted to him by the Foreign Minister. He himself
16 was convinced of the imperativeness of a Japanese
17 attack on Russia and of the imperativeness of the block-
18 ing of English supplies to Egypt and would immediately
19 report to Tokyo in accordance with the Foreign Minister's
20 statements, which were of the greatest interest to
21 Tokyo. OSHIMA seemed very enthusiastic over the idea.

22 * * *

23 "Berlin, 10 July 1942.

24 "(signed) GOTTFRIEDSEN."

25 The next document, No. 7 on the order list, I

will omit.

1 IPS document No. 2312, a captured German docu-
2 ment recording the minutes of the discussion of the
3 Reich Foreign Minister with Ambassador OSHIMA on 6 March
4 1943, was received in evidence for identification only,
5 as exhibit 812, page 8013 of the transcript. I now
6 offer in evidence IPS document No. 2312-B, an excerpt
7 therefrom, for the purpose of contradicting the testimony
8 of OSHIMA appearing at page 34,265, line 5, to page
9 34,266, line 10, in which he denied that there were con-
10 ditions attached to the presentation of two U-boats by
11 Germany to Japan, and for the further purpose of con-
12 tradicting the testimony of Admiral NOMURA.

13 THE PRESIDENT: Mr. Tavenner, one of the Judges
14 would like to know how it was you did not use these
15 documents in your case in chief when you appear to have
16 had them long before you closed the case? I refer now
17 to several documents admitted this afternoon.

18 I know that according to the test we laid down
19 recently you are quite within your rights in tendering
20 them.

21 MR. TAVENNER: In the main, I think that ques-
22 tion can be answered in this manner: That the defendant
23 OSHIMA took the position, for instance, that he had not
24 favored a war with Russia in his affidavit and in his
25

cross-examination, as a result of which questions were
1 put to the accused confronting him with certain definite
2 and specific conversations that he had, in which --

3 THE PRESIDENT: The particular Judge knows all
4 that, but he does not know why you did not use those
5 documents when you were giving evidence in chief, that
6 is, before the prosecution rested its case, seeing that
7 you had the documents long before you rested your case.

8 The American Army certificates are dated April
9 1946 and some of them before the Indictment was presented
10 in Tokyo. I know that under our recent ruling you are
11 entitled to offer it, but the particular Judge wants to
12 know why you did not give it as part of your case in
13 chief.

14 MR. TAVENNER: I would state that the principal
15 reason is that it was not contemplated at the time that
16 there would be a denial to the particular matter, and
17 that in some instances the importance of the particular
18 item was not appreciated at the moment.

19 THE PRESIDENT: Was it anticipated, for example,
20 that OSHIIA would admit that he approved of Hitler's
21 statement that American seamen should be deliberately
22 shot in the water when their ships were submarined?
23 Did you have that evidence before you rested your case?

24 MR. TAVENNER: No, sir. That document was brought

1 back here from Washington, I think either in August or
2 September 1947, and it did not come to our attention
3 until after the general Pacific phase of the defense was
4 over.

5 THE PRESIDENT: There are other documents which
6 were available to you before you rested your case, but
7 you say you did not use them because you could not
8 anticipate that OSHIMA would not have denied their
9 contents?

10 MR. TAVENNER: In some instances.

11 THE PRESIDENT: Yes. Well, proceed with this
12 document.

13 MR. SHIMANOUCHI: I should like to say a few
14 words, sir.

15 I should like to say that the defendant OSHIMA
16 has not denied that he had heard from Hitler the point
17 about the killing of merchant seamen by submarines.
18 OSHIMA has stated in his affidavit and also in a memo-
19 randum which he tendered to Captain Robinson that in
20 January 1941 Hitler had told him, OSHIMA, that the Ger-
21 man Government had issued orders to German submarines
22 to kill survivors of merchant ships. Regarding the kill-
23 ing of merchant seamen by submarines, the evidence here-
24 fore presented by the prosecution has been parts of
25 interrogations of the accused.

Greenberg & Yelden

1 MR. TAVENNER: If it please the Tribunal,
2 if I may be permitted to interrupt, all of the remarks
3 are addressed to the contents of the previous docu-
4 ment which was admitted. I thought I should call that
5 to counsel's attention.

6 MR. SHIMANOCHI: I wanted to speak of the
7 connection between that document just referred to and
8 the present document which is being tendered. Accord-
9 ing to the evidence already adduced by the prosecution,
10 OSHIMA is said to have heard of this matter from
11 Ribbentrop in the course of a conversation with the
12 German Foreign Minister in March, 1943. It is there-
13 fore now clear that there was no conversation whatso-
14 ever as to the killing of merchant seamen by this
15 document. Hence, there is no importance in this
16 document.

17 THE MONITOR: That word, "therefore," should
18 be omitted in the sentence before. He corrected it.

19 MR. CUNNINGHAM: Now, your Honors, we get to
20 the objection on this specific document. This other
21 discussion was aroused by the question which your Honor
22 asked about the submarines. As was suggested, the
23 original prosecution case emphasized that Ribbentrop
24 and OSHIMA had conversations about this matter, and
25 that is why I met that issue in Ribbentrop's affidavit.

1 We had no inkling that they contended that OSHIMA
2 and Hitler talked about it in 1942, which we contend
3 is not the case.

4 Now, the objection to prosecution document
5 2312-B -- that is what we are talking about, isn't it?
6 So that we understand each other -- I object to the
7 use of this document when there is neither sufficient
8 time nor facilities to question the author or to
9 investigate the circumstances surrounding it. Now,
10 the prosecution didn't identify this Gottfried.
11 Gottfried was the young man to whom Stahmer referred
12 as his successor as liaison between Ribbentrop and
13 OSHIMA after Stahmer came as envoy to China. This
14 document doesn't prove anything new or add anything
15 new. The document leaves more doubt than ever as to
16 its own significance because if the prosecution wanted
17 to throw some light on this case they could show this
18 Tribunal what happened to those two submarines. They
19 had plenty of opportunity to ask Admiral NOMURA what
20 the actual situation was. Your Honor, it has been
21 explained here time and again. This U-boat -- two
22 submarines -- transfer went through the Japanese Embassy
23 in Berlin and OSHIMA handled the diplomatic transaction.
24 Now, why should we spend hours discussing a small
25 matter like that?

1 THE PRESIDENT: Mr. Tavenner, a Member of
2 the Tribunal desires to know whether the prosecution
3 with this document drop their submission that one of
4 the conditions of the transfer of the German U-boats
5 was the acceptance of the policy of killing survivors?

6 MR. TAVENNER: No, sir.

7 THE PRESIDENT: By a majority the objection
8 is overruled and the document admitted on the usual
9 terms.

10 MR. TAVENNER: If your Honor pleases, there
11 is a possibility I misunderstood the form of your
12 question. Would you mind repeating it?

13 (Whereupon, the official court
14 reporter read the President's question.)

15 MR. TAVENNER: I understood the question
16 properly.

17 CLERK OF THE COURT: Prosecution document
18 2312-B will receive exhibit No. 3817.

19 (Whereupon, the document above
20 referred to was marked prosecution exhibit
21 No. 3817 and received in evidence.)

22 MR. TAVENNER: I will read exhibit 3817:

23 "Minutes Reich Minister for Foreign Affairs
24 14/43 top secret (in ink).

25 "Minutes on the discussion of the Reich Minister

for Foreign Affairs with Ambassador OSHIMA on 6 March
1 1943.

2 "The Reich Foreign Minister then questioned
3 the Ambassador with respect to the telegram forwarded
4 from Tokyo during the last discussions, whether he had
5 new reports from his Government concerning the submarine
6 question, and what actually it intended to do in this
7 direction. OSHIMA replied the Japanese Government
8 intended to accentuate the submarine warfare and
9 would like to make the necessary preparations to this
10 end. The present Japanese submarines were not suitable
11 for this warfare, a fact which Admiral Doenitz had
12 confirmed after examination of the Japanese boat in
13 Lorient. Therefore, the Japanese Navy would have to
14 rearrange its building program and would be thankful
15 if they could obtain two U-boats as specimens from
16 the German Navy.

17
18 "The Reich Foreign Minister asked Ambassador
19 OSHIMA to see him once more on the same day, in order
20 to inform him that the German Government, after con-
21 sulting the Navy, was prepared to put one or two
22 U-boats at the disposal of the Japanese Navy. He
23 suggested that Admiral NOMURA now discuss the details
24 of this matter with Admiral Meissel. The German
25 Government did this on the condition that the Japanese

1 Navy would start as fast as possible the U-boat
2 building program on a large scale and in mass pro-
3 duction. The Ambassador stated that the Japanese
4 Government was prepared to do this. The training of
5 the crews would not offer any special difficulties as
6 the training of a U-boat crew for use against merchant
7 shipping is easier than for use in large Japanese
8 submarine cruisers for naval operations. As for mass
9 production, OSHIMA was of the opinion that this ques-
10 tion also would certainly be solved as the smaller
11 boats could be built faster and did not require so
12 many complicated installations as the boats hitherto
13 built there /in Japan/. Reich Foreign Minister (RAM)
14 on his part pointed out that the U-boat itself could
15 be built rather quickly, the main difficulty, however,
16 lay in the construction of the machines. In order to
17 assist the Japanese Navy in carrying out the program
18 it would surely be possible to put German engineers
19 at their disposal for the machine construction and
20 also officers who had sufficient experience for the
21 tactical use of the boats against merchant shipping.
22 OSHIMA stated that the Japanese Navy would certainly
23 be very grateful for every assistance and he would now
24 ask Admiral NOMURA to discuss the details of this
25 problem with the German Navy.

1 "The Reich Foreign Minister (RAM) expressed
2 his opinion that Japan within a short time would be
3 able, from her far advanced bases, to make an effective
4 assault at the enemy supply lines and after Ambassador
5 OSHIMA on behalf of his government had expressed his
6 thanks for the German willingness, the Reich Foreign
7 Minister (RAM) then took leave of the Ambassador.

8 "Berlin 9 March 1943.

9 "(Signed) Gottfried."

10 MR. CUNNINGHAM: Your Honor, I wonder if I
11 could ask a question.

12 In the defense case the prosecution gradually
13 came in to explain their side of the case with refer-
14 ence to the record and documents. Now, on matters of
15 this kind we have many references in the record that
16 answer the prosecution's issues. What is the position
17 now?

18 THE PRESIDENT: I can only recollect the
19 prosecution, during the cross-examination, referring
20 to documents and saying, We will not cross-examine
21 about this but we will refer to documents to save time.
22 That was allowed to the defense also.

23 MR. CUNNINGHAM: I submit that it would be
24 much more effective from our point of view if we could
25 cite the place in the record that refutes the claim of

1 the prosecution as you are considering the matter
2 rather than waiting for summation or waiting for
3 our surrebuttal, which will take a long time in pick-
4 ing up what the prosecution are doing and then offering
5 our evidence in addition, don't you see?

6 THE PRESIDENT: We have no intention of
7 making any such rule at present.

8 MR. TAVENNER: Shall I proceed?

9 THE PRESIDENT: Yes.

10 MR. TAVENNER: With regard to OSHIMA's
11 presentation of a plan providing for a German credit
12 to Japan of one billion yen to enable Japan to obtain
13 machines, armaments and factory equipment, page 34,223,
14 lines 12-23, OSHIMA denied that the presentation of
15 this plan of credit was made on his own initiative and
16 without authority of his government.

17 I offer in evidence two documents in contra-
18 diction of this testimony. They are important because
19 they show the extent of OSHIMA's activity.

20 First, I offer in evidence for identification
21 only IPS document 4054, Item 2, a captured German docu-
22 ment, it being a telegram from the German Ambassador
23 and Wohltat in Tokyo, bearing date 23 January 1942;
24 and I offer in evidence IPS document No. 4054-A, an
25 excerpt therefrom.

THE PRESIDENT: Mr. Cunningham.

1 MR. CUNNINGHAM: I object to both documents
2 for the reason they are not important, have no proba-
3 tive value, deal only with economic matters, trans-
4 actions between the Foreign Offices of two different
5 governments at a time of war. I suggest that nothing
6 came of this matter and that, certainly, the prose-
7 cution ought to put in their evidence first as to
8 what the result was before they show the negotiations
9 which turned out to be useless. I suggest that that
10 is what OSHILA was in Berlin for, to carry on the
11 negotiations between the two countries. We do not
12 deny that. It was his duty. This is cumulative and
13 immaterial and, certainly, has no relevancy; it is
14 details of negotiations for an economic agreement
15 which are nothing unusual between allies at war.

16 THE PRESIDENT: By a majority the objection
17 is overruled and the document admitted on the usual
18 terms.

19 CLERK OF THE COURT: Prosecution document
20 4054, Item 2, will receive exhibit No. 3818 for
21 identification only; the excerpt, being document No.
22 4054A, will receive exhibit No. 3818A.

23 (Whereupon, document No. 4054
24 was marked prosecution exhibit No. 3818
25 for identification; and the excerpt there-

1 from, document 4054A, was marked prosecu-
2 tion exhibit No. 3818A and received in
3 evidence.)

4 MR. TAVENNER: I will read document 3818A
5 omitting the formal parts:

6 "23 January

7 "(Secret Reich Matter)

8 "1) OSHIMA's proposal on the granting of a
9 thousand million credit, which according to secret
10 information reaching me is on his own initiative, only
11 enlarges the order of magnitude of the objects under
12 negotiation. The content of the treaty text is, how-
13 ever, not fundamentally affected, because, in contra-
14 diction to OSHIMA's assumption, an agreement to take
15 effect right now in the war has been negotiated with
16 the Japanese Government. The Japanese Government and
17 we, in advance of OSHIMA's action, were already agreed
18 that the treaty text now being printed should be put
19 into use as soon as possible.

20
21 "5) In consideration of the fact that OSHIMA
22 has not been able to put across his personal views in
23 the economic-political field (preferential treatment
24 in North China, for example) with his government, it
25 must be doubted whether the latter will empower him to
make commitments in the above sense and to the extent

1 necessary to cover the German demand for raw materials.

2 "WOHLTAT"

3 I now offer as the second document IPS docu-
4 ment No. 4054-B, a captured German document, it being
5 a memorandum signed by Wiehl, bearing date of 24
6 January 1942, an additional excerpt from the original
7 document.

8 MR. CUNNINGHAM: Object to this document for
9 the reason that it is only an economic negotiation
10 between the countries at a time of war, nothing un-
11 usual, has no probative value, is of no importance in
12 solving any of the issues involved in this case.

13 THE PRESIDENT: By a majority, the objection
14 is overruled and the document admitted on the usual
15 terms.

16 CLERK OF THE COURT: Prosecution document
17 4054B will receive exhibit No. 3818B.

18 (Whereupon, the document above
19 referred to was marked prosecution exhibit
20 No. 3818B and received in evidence.)

21 MR. TAVENNER: I will read exhibit 3818B:

22 "Berlin, 24 January 1942

23 "MEMORANDUM

24 "The Japanese envoy, MATSUSHIMA, came back
25 today on the subject of our talk of yesterday and

1 stated as follows: He had reported to Ambassador
2 OSHIMA on our conversation of yesterday. The latter
3 was of the opinion that it would delay the concluding
4 of the credit treaty too long if first the position
5 of the Japanese Government regarding the treaty pro-
6 posal advanced by me were obtained. OSHIMA had accord-
7 ingly ordered him to deliver to me his proposal for an
8 'economic alliance treaty' with a secret protocol,
9 although the assent of the Japanese Government thereto
10 already requested some time ago by the Japanese Am-
11 bassador here had not yet come in. Ambassador OSHIMA
12 in this connection had on his own initiative altered
13 the secret protocol to this economic alliance treaty
14 so that it corresponded with Item 1 of our credit
15 proposal. OSHIMA believed he would get the approval
16 of his government to the adjustments proposed by him
17 just as soon as he could report that the German
18 Government was in accord with them. The adjustments
19 could then be signed here immediately. If the treaty
20 were concluded in its essentials in this way, the
21 succeeding negotiations to take place in Tokyo on the
22 further details contained in the German credit pro-
23 posal would swiftly lead to a result."

24 I will omit reading the rest of the memo-
25 randum.

At page 34,272, lines 11 to 23, OSHIMA denied that he was in favor of a Japanese attack on Russia, and at page 34,276, line 16 to page 34,277, line 5, he denied agreeing with Ribbentrop's suggestion on 23 March, 1942 that an advance of Japanese armies against Vladivostok in the direction of Baikal Sea was advisable and denied that he was in favor of such action. At page 34,226, line 25 to page 34,227, line 12, questions were put to OSHIMA regarding the discussion with Ribbentrop on 23 March, 1942 of future economic cooperation, and he asserted that he did not handle economic negotiations at page 34,230.

I offer in evidence IPS document No. 4092, it being a telegram from Ribbentrop to the German Ambassador in Japan, bearing date of 26 March 1942 in contradiction of the foregoing testimony. The document is important in that it shows OSHIMA's efforts to influence his government's decisions.

MR. CUNNINGHAM: Object to this document for the reason that it is a purely one-sided view of Ribbentrop, no probative value except to show a strong desire of Ribbentrop to induce Japan to attack Russia, which is an established fact in this trial, and any more evidence in this respect is cumulative. As I recall, I put forth great effort to show this

1 Tribunal that Germany did everything within its
2 diplomatic power and put all the pressure they could
3 on Japan to get Japan to attack Russia, and Japan
4 failed to cooperate.

5 Now, on the economic matter, it is not
6 important, it is not material what the Ambassador
7 did in promoting the economic relations of his country
8 in regard to European nations; and, therefore, the
9 document has no probative value and, certainly, has
10 no importance here.

11
12 THE PRESIDENT: The objection is overruled
13 and the document admitted on the usual terms.

14 Read it in the morning, Mr. Tavenner.

15 Call the number.

16 CLERK OF THE COURT: Prosecution document
17 4092 will receive exhibit No. 3819.

18 (Whereupon, the document above
19 referred to was marked prosecution exhibit
20 No. 3819 and received in evidence.

21 THE PRESIDENT: We will adjourn until half-
22 past nine tomorrow morning.

23 (Whereupon, at 1600, an adjourn-
24 ment was taken until Thursday, 22 January,
25 1948 at 0930.)

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